



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार 5 अप्रैल, 2012/16 चैत्र, 1934

हिमाचल प्रदेश सरकार

स्वास्थ्य एवं परिवार कल्याण विभाग

अधिसूचना

शिमला-2, 4 जनवरी, 2012

संख्या: एच.एफ.डब्ल्यू-बी(ए)2-2/2001-loose.—हिमाचल प्रदेश चिकित्सा परिषद् अधिनियम, 2003 की धारा 31 के उपबन्धों के अधीन यथा अपेक्षित, हिमाचल प्रदेश चिकित्सा परिषद् (साधारण), नियम, 2007 का प्रारूप, इससे सम्भाव्य प्रभावित होने वाले व्यक्तियों से, इसके प्रकाशन की तारीख से तीस दिन की अवधि के भीतर आक्षेप/सुझाव आमंत्रित करने के लिए तारीख 19.9.2007 के राजपत्र, हिमाचल प्रदेश (आसाधारण), में समसंख्यक अधिसूचना तारीख 16.8.2007 द्वारा प्रकाशित किया गया था ;

और नियत अवधि के भीतर उक्त प्रारूप नियमों की बाबत जन साधारण से कोई आक्षेप/सुझाव प्राप्त नहीं हुए हैं ;

अतः हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश चिकित्सा परिषद् अधिनियम, 2003 की धारा 31 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित नियम बनाती है; अर्थात् :—

“प्रारूप नियम”**भाग-1****प्रारम्भिक**

1. **संक्षिप्त नाम.**—इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश चिकित्सा परिषद् (साधारण) नियम, 2011 है।

2. **परिभाषाएं.**—(1) इन नियमों में, जब तक कि कोई बात विषय या सन्दर्भ में विरुद्ध न हो,—

(क) “अधिनियम से हिमाचल प्रदेश चिकित्सा परिषद् अधिनियम, 2003 (2003 का 16) अभिप्रेत है ;

(ख) “परिशिष्ट” से इन नियमों से संलग्न परिशिष्ट अभिप्रेत है ;

(ग) “शिकायतकर्ता (“परिवादी”) से कोई व्यक्ति जो अधिनियम के अधीन शिकायत (परिवाद) करता है, अभिप्रेत है

(घ) शिकायत (परिवाद) से धारा 7 के अधीन चिकित्सा व्यवसायी द्वारा उपगत किसी निरर्हता की बाबत परिवादी द्वारा रजिस्ट्रार या अध्यक्ष को लिखित में सम्बोधित कोई अभिकथन अभिप्रेत है ;

(ङ) “प्रारूप” से इन नियमों से संलग्न प्रारूप अभिप्रेत है ;

(च) ‘व्यक्ति’ के अंतर्गत कोई कम्पनी या निगमित निकाय या संगम या व्यष्टियों का निकाय, चाहे निगमित हो या नहीं या कृत्रिम विधिक व्यक्ति सम्मिलित होगा ;

(छ) ‘विहित फीस’ से हिमाचल प्रदेश चिकित्सा परिषद् (फीस) नियम, 2011 के अधीन या अधिनियम के अन्य उपबन्धों के अधीन राज्य सरकार द्वारा विहित फीस अभिप्रेत है ;

(ज) “धारा” से अधिनियम की धारा अभिप्रेत है ; और

(झ) “राज्य सरकार” से हिमाचल प्रदेश सरकार अभिप्रेत है।

(2) समस्त अन्य शब्दों और पदों के, जो इसमें प्रयुक्त हैं किन्तु इन नियमों में परिभाषित नहीं हैं, वही अर्थ होंगे जो अधिनियम में उनके हैं।

भाग-2**परिषद् का मुख्यालय, निगम मुद्रा, (कारपोरेट सील) सदस्यों की नियुक्ति और कारबार संचालन**

3. **मुख्यालय.**—परिषद् का कार्यालय शिमला के इन्दिरा गांधी चिकित्सा महाविद्यालय और अस्पताल में या ऐसे अन्य स्थान पर जैसा कि सरकार नियत करे, स्थित होगा।

4. **निगम मुद्रा.**—(1) परिषद् की सामान्य मुद्रा को दो भिन्न-भिन्न तालों वाले किसी डिब्बे में रखा जाएगा। और जिसके एक ताले की चाबी अध्यक्ष की अभिरक्षा और दूसरे ताले की चाबी रजिस्ट्रार की अभिरक्षा में रहेगी।

(2) प्रत्येक रजिस्ट्रीकरण प्रमाण पत्र, जो कि इन नियमों के अधीन जारी किया गया है, और ऐसे अन्य दस्तावेजों जिन्हें परिषद्, या जब परिषद् आसीन न हो तो कार्यकारी समिति निर्दिष्ट करे। को मुद्रांकित किया जाएगा परन्तु उक्त समिति द्वारा, इसका उपयोग ऐसे कार्यों तक ही सीमित रहेगा जैसा कि परिषद् द्वारा, इसको प्रत्यायोजित की गई शक्तियों को प्रभावी बनाने के लिये आवश्यक हो।

5. सदस्यों का रजिस्टर.—प्ररूप-1 में एक वही (पुस्तक रखी जाएगी, जिसमें परिषद् के सदस्यों के नाम, निर्वाचक मण्डल जिसका वे प्रतिनिधित्व करते हैं; प्रत्येक सदस्य की नियुक्ति की तारीख, कार्यकाल जिसके लिए वह निर्वाचित/नामांकित किया गया है और मृत्यु की तारीख प्रत्येक सदस्य के त्यागपत्र या सेवानिवृत्ति की तारीख अन्तर्दिष्ट होगी और ऐसी वही का रख रखाव नियमित रूप से किया जाएगा ताकि उस अवधि को दर्शित किया जाए जिसमें प्रत्येक निकाय जिसे नियुक्ति की शक्ति हो, नई नियुक्ति करने हेतु अग्रसर हो सके तथा राज्य सरकार द्वारा नियुक्त सदस्यों की बावत वैसी ही विशिष्टियों को रखा जाएगा।

6. बैठकें करना.—(1) परिषद् एक कलैण्डर वर्ष में, ऐसी तारीख, समय और स्थान पर जैसा अध्यक्ष द्वारा नियत किया जाए, कम से कम दो बार बैठक करेगी परन्तु यह कि अध्यक्ष :

- (क) परिषद् के ध्यान हेतु अपेक्षित किसी आवश्यक कारबार को निपटाने के लिए किसी भी समय 10 दिन पूर्ण का नोटिस देते हुए विशेष बैठक बुला सकेगा; और
- (ख) बैठक के प्रयोजन और अधिनियम के उपबन्धों के अधीन परिषद् द्वारा किए जाने वाले कारबार का विवरण देते हुए यदि वह कम से कम 1/3 (एक तिहाई) सदस्यों द्वारा हस्ताक्षरित लिखित में नोटिस प्राप्त करता है तो 15 दिन का नोटिस देकर विशेष बैठक बुलाएगा।

(2) यदि परिषद् संकल्प द्वारा कोई अन्य कारबार संव्यवहृत करने हेतु सहमत न हो तो अध्यक्ष द्वारा बुलाई गई विशेष बैठक में केवल वही कारबार संव्यवहृत किए जाएंगे, जिसके लिए बैठक बुलाई गई है।

7. बैठक बुलाने के लिए नोटिस.—(1) समस्त सदस्यों को रजिस्ट्रार द्वारा साधारण बैठक के लिए 30 पूर्ण दिन का नोटिस और विशेष बैठक के लिए 15 दिन का नोटिस दिया जाएगा। प्रत्येक नोटिस की बैठक की तारीख, समय, स्थान और कार्य सूची विनिर्दिष्ट करेगा तथा इसे परिषद् के कार्यालय को भी डाक द्वारा भेजा जाएगा।

(2) कोई सदस्य, जो किसी कारबार के संव्यवहार हेतु सम्मिलित करने के लिए जो कार्यसूची में सम्मिलित न हो यदि कोई प्रस्ताव लाना चाहता हो तो बैठक के लिए नियत की गई तारीख से पूर्व 20 पूर्ण दिन से अन्यून का नोटिस रजिस्ट्रार को देगा।

(3) रजिस्ट्रार विशेष बैठक के लिए नियत तारीख से कम से कम 10 पूर्ण दिन से अन्यून उक्त बैठक में संव्यवहृत किए जाने वाले कारबार को दर्शाते हुए बैठक के नोटिस के साथ पूर्ण कार्यसूची कागज पत्र (एजेण्डा पेपर) जारी करेगा।

(4) कोई सदस्य जो कार्यसूची में सम्मिलित किसी मद के संशोधन हेतु प्रस्ताव लाना चाहता है तो बैठक के लिए नियत तारीख से 3 पूर्ण दिन से अन्यून पूर्व रजिस्ट्रार को नोटिस देगा।

(5) रजिस्ट्रार, यदि समय अनुज्ञात करे समस्त संशोधनों, जिनकी बावत उप-नियम (5) के अधीन नोटिस दिया गया है, की सूची प्रत्येक सदस्य के उपयोग हेतु उपलब्ध करवाएगा परन्तु अध्यक्ष, यदि परिषद् सहमत हो, इस तथ्य के होते हुए भी कि नोटिस बहुत देर से प्राप्त किया गया था, नोटिस को बैठक में चर्चा हेतु अनुज्ञात कर सकता है।

(6) अध्यक्ष और रजिस्ट्रार चर्चा करेंगे और विनिश्चय करेंगे कि ऐसे नोटिस/प्रस्ताव को कार्यसूची में सम्मिलित किया जाना है या नहीं तथा जहां ऐसे नोटिस/प्रस्ताव को अनुज्ञात किया गया हो, वहां नोटिस/प्रस्ताव भेजने वाले सदस्य को ऐसा करने के लिए कारण संसूचित किए जाएंगे।

8. प्रस्ताव की अस्वीकार्यता.—(1) कोई प्रस्ताव स्वीकार्य नहीं होगा —

- (क) यदि वह विषय, जिससे यह सम्बन्धित है, परिषद् के कृत्यों की परिधि के भीतर नहीं है।

- (ख) यदि उसी प्रश्न को, जिसे उस बैठक की तारीख से एक वर्ष के भीतर जिसमें इसे प्रस्तावित करने हेतु रूपरेखा तैयार की गई है परिषद् की इजाजत से प्रस्ताव या संशोधन के रूप में प्रस्तावित किया गया है या वापिस लिया गया है, सारतः नहीं उठाया गया है ;

परन्तु ऐसा प्रस्ताव इस प्रयोजन हेतु आयोजित परिषद् की विशेष बैठक में परिषद् के कम से कम दो तिहाई सदस्यों की अध्यक्षता पर स्वीकृत (ग्रहण) किया जा सकता है:

परन्तु यह और कि इन नियमों की कोई भी बात राज्य सरकार द्वारा अधिनियम के अधीन अपने किन्हीं कृत्यों का प्रयोग करते हुए, परिषद् को निर्दिष्ट किए गए किसी मामले पर आगामी चर्चा निषिद्ध नहीं करेगी।

- (ग) जब तक इसे स्पष्टतः और प्रमिततः व्यक्त नहीं किया गया हो और सारतः एक निश्चित विवाद्यक उठाता हो, और

- (घ) यदि इसमें अनुमान व्यंगोक्ति अभिव्यंजना या अपमानजनक कथन अंतर्विष्ट है।

(2) अध्यक्ष किसी प्रस्ताव को जो उसकी राय में उप नियम (1) के अधीन अस्वीकार्य है, अननुज्ञात कर सकेगा।

परन्तु यदि प्रस्ताव संशोधन द्वारा स्वीकार्य बन सकता है तो, अध्यक्ष इसे संशोधित रूप में स्वीकार कर सकेगा।

(3) जब अध्यक्ष किसी प्रस्ताव को अनुज्ञात या संशोधित करता है तो रजिस्ट्रार, प्रस्ताव का नोटिस देने वाले सदस्य को, यथास्थिति, अस्वीकृति के आदेश या उस स्वरूप के बारे में, जिसमें प्रस्ताव स्वीकृत किया गया है, सूचित करेगा।

9. बैठक में हाजिरी.—प्रत्येक बैठक में, एक हाजिरी रजिस्टर, बैठक कक्ष में रखा जाएगा और प्रत्येक उपस्थित सदस्य रजिस्टर में अपने नाम के सामने हस्ताक्षर करेगा।

10. अध्यक्ष और बैठक की गणपूर्ति.—(1) परिषद की प्रत्येक बैठक की अध्यक्षता, अध्यक्ष द्वारा या यदि वह अनुपस्थित है तो उपाध्यक्ष द्वारा या, अध्यक्ष और उपाध्यक्ष दोनों अनुपस्थित हैं तो सदस्यों द्वारा उन में से निर्वाचित पीठासीन अधिकारी द्वारा की जाएगी।

(2) अध्यक्ष को निर्दिष्ट समस्त निर्देश तत्समय बैठक की अध्यक्षता करने वाले व्यक्ति को निर्दिष्ट करते हुए पढ़े जाएंगे।

- (3) अध्यक्ष सहित, बैठक में उपस्थित परिषद् के आठ सदस्यों से गणपूर्ति होगी:

परन्तु गणपूर्ति न होने के कारण बैठक स्थगित होने की दशा में, उसी विवाद्यक पर आयोजित अगली बैठक में कोई गणपूर्ति अपेक्षित नहीं होगी।

11. गणपूर्ति के अभाव में बैठक का स्थगन.—यदि बैठक के लिए नियत समय पर गणपूर्ति नहीं होती है बैठक तब तक प्रारम्भ नहीं होगी जब तक कि गणपूर्ति नहीं हो जाती और यदि बैठक के लिए नियत समय से 30 मिनट के अवसान पर या किसी बैठक के दौरान गणपूर्ति नहीं होती तो बैठक भविष्य में ऐसे समय और तारीख के लिए स्थगित हो जाएगी जैसी अध्यक्ष नियत करें।

12. मतदान द्वारा विनिश्चय.—(1) परिषद् द्वारा बैठक में चर्चा किए जाने और विनिश्चित किए जाने हेतु प्रत्येक मामला किसी सदस्य द्वारा प्रस्ताव के रूप में प्रस्तुत किया जाएगा और अध्यक्ष इसे मतदान हेतु परिषद् को प्रस्तुत करेगा।

(2) मतदान, हाथ खड़े करके या विभाजन द्वारा या मतपत्र द्वारा, जैसा अध्यक्ष निर्दिष्ट करे, किया जाएगा:

परन्तु यदि तीन या अधिक सदस्य ऐसा चाहें और इसकी मांग करें तो मतदान मत पत्र द्वारा किया जाएगा:

परन्तु यह और कि यदि मतदान हाथ खड़े करके किया गया है तो विभाजन तभी किया जाएगा यदि सदस्य इसकी मांग करता है।

(3) अध्यक्ष विभाजन द्वारा मतदान की पद्धति अवधारित करेगा।

(4) मतदान का परिणाम अध्यक्ष द्वारा घोषित किया जाएगा और वह किसी सदस्य द्वारा चुनौती दिए जाने के लिए दायी नहीं होगा।

(5) मतों की समानता की दशा में, अध्यक्ष का मत दूसरा या निर्णायक होगा।

(6) बैठक के दौरान, अध्यक्ष, किसी भी समय, चर्चा में सदस्यों की सहायता हेतु किसी विषय बिन्दु के स्पष्टीकरण के लिए कोई आक्षेप कर सकेगा या सुझाव या सूचना दे सकेगा।

13. परिषद् के कार्यवृत्त.—(1) परिषद् की बैठकों की कार्यविधियां रजिस्ट्रार द्वारा फाईल पर टंकित/मुद्रित कार्यवृत्त के रूप में परिरक्षित रखी जाएगी जिन्हें अध्यक्ष द्वारा पुष्टि के पश्चात् अधिप्रमाणित किया जाएगा।

(2) प्रत्येक बैठक के कार्यवृत्त की प्रतियां रजिस्ट्रार द्वारा बैठक से 15 दिन के भीतर अध्यक्ष को प्रस्तुत की जाएंगी और उसके द्वारा सत्यापित की जाएगी तथा रजिस्ट्रार द्वारा प्रत्येक सदस्य को एक प्रति, बैठक से 30 दिन के भीतर भेजी जाएगी।

(3) बैठक के कार्यवृत्तों में ऐसे प्रस्ताव और संशोधन अन्तर्विष्ट होंगे जो प्रस्तावक (प्रस्थापक) और अनुमोदक (समर्थक) के नामों सहित प्रस्तावित और अंगीकृत (स्वीकृत) या अस्वीकृत किए गए हैं, परन्तु किसी सदस्य द्वारा बैठक में की गई टीका टिप्पणी को अभिलिखित किए बिना होंगे।

(4) यदि कार्यवृत्त की शुद्धता की बावत कोई आक्षेप रजिस्ट्रार द्वारा कार्यवृत्त के प्रेषण से 30 दिन के भीतर प्राप्त हुआ है, तो ऐसे आक्षेप यथा अभिलिखित और सत्यापित कार्यवृत्त सहित पुष्टिकरण हेतु परिषद् की आगामी बैठक के समक्ष रखे जाएंगे। इस बैठक में बैठक के कार्यवृत्तों को शुद्धकृत करने के सिवाय कोई प्रश्न नहीं उठाया जाएगा:

परन्तु यदि परिषद् द्वारा बैठक में लिए गए विनिश्चय की बावत रजिस्ट्रार द्वारा किसी विशिष्ट बैठक से सम्बद्ध कार्यवृत्त के प्रेषण की तारीख से 30 दिन के भीतर कोई आक्षेप प्राप्त नहीं होता है, तो ऐसा, विनिश्चय, यदि समीचीन हो, आगामी बैठक के कार्यवृत्त की पुष्टि से पूर्व प्रभावी किया जा सकेगा।

परन्तु यह और कि अध्यक्ष यह निदिष्ट कर सकेगा कि 30 दिन की अवधि के अवसान से पूर्व परिषद् के विनिश्चय पर कार्रवाई की जाए।

(5) परिषद् के कार्यवृत्त उनकी पुष्टि के पश्चात् यथासाध्य शीघ्रता से शीटों (कागजों) में तैयार किए जाएंगे और उन्हें जिल्द में अन्तः स्थापना हेतु क्रमानुसार पृष्ठांकित किया जाएगा, जिसे स्थाई रूप से परिरक्षित किया जाएगा।

(6) परिषद् के सदस्यों के उपयोग हेतु परिषद् की बैठक में टीका टिप्पणियों और चर्चाओं की रिपोर्ट व सही (शुद्ध) रीति में रखी जाएगी। बैठकों की विस्तृत कार्यवाहियां 'गोपनीय' समझी जाएगी और कार्यालय में रखी जाएगी तथा सदस्यों के निरीक्षण के लिए खुली होगी। कार्यवाहियों की एक प्रति पूर्ण या आंशिक किसी भी सदस्य को जो इसके लिए आवेदन करता हो, प्रदत्त की जाएगी। ऐसी प्रति पर 'गोपनीय' चिन्हित किया जाएगा तथा अध्यक्ष द्वारा नियत राशि, जो प्रतिलिपि (नकल) की लागत से अनधिक होगी, के संदाय पर प्रदत्त की जाएगी। बंद कमरे में हुई कार्यवाही की कोई प्रति प्रदत्त नहीं की जाएगी, परन्तु ऐसी कार्यवाहियों का निरीक्षण सदस्यों द्वारा किया जा सकेगा।

भाग-3

अध्यक्ष और उपाध्यक्ष की शक्तियां और कर्तव्य

14. **अध्यक्ष की शक्तियां और कर्तव्य.**—अध्यक्ष ऐसी शक्तियों का प्रयोग और कर्तव्यों का पालन करेगा जो अधिनियम, नियमों और परिषद् के स्थाई आदेशों के उपबन्धों में अन्तर्विष्ट है वह उन उद्देश्यों, जिसके लिए परिषद् की स्थापना हुई है, को अग्रसर करने के लिए ऐसे कार्य जैसा वह उचित समझे, करेगा।

15. **उपाध्यक्ष की शक्तियां और कर्तव्य.**—यदि अध्यक्ष का पद रिक्त रहता है या किसी कारणवश अध्यक्ष अपने पद की शक्तियों का प्रयोग या कर्तव्यों का पालन करने में असमर्थ रहता है, तो उपाध्यक्ष, उसके स्थान पर कार्य करेगा और अध्यक्ष की शक्तियों का प्रयोग और कर्तव्यों का पालन करेगा।

भाग-4

कार्यकारी समिति

16. **कार्यकारी समिति का गठन.**—कार्यकारी समिति अध्यक्ष और पदेन सदस्य और परिषद् द्वारा निर्वाचित इसकी प्रथम बैठक में अपने आप में से चार सदस्यों से निम्न प्रकार से गठित की जाएगी :—

- (क) अधिनियम की धारा 3 की उपधारा (3) के खण्ड (क) के अधीन नामनिर्दिष्ट सदस्यों में से निर्वाचित किया जाने वाला एक सदस्य ;
- (ख) अधिनियम की धारा 3 की उपधारा (3) के खण्ड (ख) के अधीन निर्वाचित सदस्यों में से निर्वाचित किया जाने वाला एक सदस्य;
- (ग) अधिनियम की धारा 3 की उपधारा (3) के खण्ड (ग) के अधीन निर्वाचित सदस्यों में से निर्वाचित किया जाने वाला एक सदस्य: और
- (घ) अधिनियम की धारा 3 की उपधारा (3) के खण्ड (घ), (ङ) और (च) के अधीन पदेन सदस्यों में से निर्वाचित किया जाने वाला सदस्य।

(2) परिषद् का अध्यक्ष, कार्यकारी समिति का पदेन अध्यक्ष होगा।

(3) रजिस्ट्रार कार्यकारी समिति का सचिव होगा।

17. **कार्यकारी समिति के सदस्यों का कार्यकाल और आकस्मिक शक्तियां भरने की रीति.**—(1) कार्यकारी समिति के सदस्यों का कार्यकाल, परिषद् में उनकी सदस्यता से सहविस्तारी (को टर्मिन्स) होगा।

(2) समिति के अध्यक्ष या सदस्य के कार्यकाल में आकस्मिक रिक्ति को निर्वाचन द्वारा भरा जाएगा:

परन्तु यह कि किसी निर्वाचित सदस्य के कार्यालय में ऐसी कोई रिक्ति जो समस्त सदस्यों के पद की अवधि के अवसान की तारीख से छः मास के भीतर हो जाती है, तो वह भरी नहीं जाएगी।

18. गणपूर्ति.—अध्यक्ष सहित कार्यकारी समिति के तीन सदस्यों से गणपूर्ति होगी।

19. कृत्य.—(1) कार्यकारी समिति को, परिषद् द्वारा अधिकथित सिद्धान्तों और साधारण नीति के अनुसार अधिनियम और नियमों की रूपरेखा के भीतर, परिषद् के कृत्यों का निर्वहन करने की शक्तियां होगी।

(2) विशिष्टतया और पूर्वगामी शक्ति की व्यापकता पर प्रतिकूल प्रभाव डाले बिना कार्यकारी समिति, निम्नलिखित, शक्तियों, कर्तव्यों और कृत्यों का प्रयोग करेगी, अर्थात्—

- (क) हिमाचल प्रदेश राज्य चिकित्सा रजिस्टर, जो कि रजिस्ट्रार द्वारा तैयार किया जाएगा, के प्रकाशन का अधीक्षण करना।
- (ख) कारबार (सदस्यों द्वारा अधिसूचित प्रस्तावों और संशोधनों से भिन्न) का मसौदा तैयार करना और उस पर सिफारशें प्रस्तुत करना ;
- (ग) चिकित्सा व्यवसायियों से ऐसी सूचना प्राप्त करना जो कि अधिनियम की अपेक्षाओं को सुकर बनाने में आवश्यक हो ;
- (घ) किसी आक्षेप जिस पर परिषद् का ध्यान आकर्षित करना अपेक्षित हो, पर विचार करना और उस पर रिपोर्ट तैयार करना ;
- (ङ) परिषद् को प्रस्तुत और कार्यकारी समिति को निर्दिष्ट याचिकाओं का परीक्षण और उन पर रिपोर्ट देना ;
- (च) अधिनियम की धारा 14 की उप धारा (2) के अधीन रजिस्ट्रार को अवकाश मंजूर करना ;
- (छ) अधिनियम की धारा 21 के अधीन गठित अनुशासन समिति द्वारा की गई रिपोर्टें/सिफारिशों पर विचार करना ;
- (ज) रजिस्ट्रीकृत चिकित्सा व्यवसायियों के विरुद्ध वृत्तिक आचरण के भंग के लिए शिकायतों पर विचार करना और उस पर अपनी रिपोर्ट परिषद् को प्रस्तुत करना ; और
- (झ) रजिस्ट्रीकरण हेतु समस्त आवेदनों पर परिषद् को रिपोर्ट करना जो हिमाचल प्रदेश चिकित्सा परिषद् की अनुसूची के अन्तर्गत आते नहीं हैं।

20. कार्यकारी समिति की बैठकें.—(1) कार्यकारी समिति ऐसी तारीख, समय और स्थान पर बैठक करेगी जो अध्यक्ष द्वारा नियत किया जाए। तथापि अध्यक्ष यदि उचित समझे तो कम से कम तीन सदस्यों द्वारा लिखित अध्यक्षता पर कार्यकारी समिति की असाधारण बैठक अल्प सूचना पर बुला सकेगा।

(2) अध्यक्ष और रजिस्ट्रार बैठक की कार्यसूची (एजेण्डा) पर विचार विमर्श और विनिश्चित करेंगे।

21. बैठक की सूचना.—रजिस्ट्रार कार्यकारी समिति के समस्त सदस्यों को साधारण बैठक की दशा में सात पूर्ण दिन का और असाधारण बैठक की दशा में तीन पूर्ण दिन का नोटिस देगा। जिसमें बैठक का स्थान तारीख और समय विनिश्चित होगा तथा उसमें किए जाने वाले संव्यवहारित कारबार के कथन सहित यह भी उल्लिखित होगा कि बैठक साधारण बैठक है या असाधारण बैठक है।

22. बैठक में उपस्थिति.—प्रत्येक बैठक में एक उपस्थिति रजिस्टर बैठक कक्ष में रखा जाएगा और प्रत्येक उपस्थित सदस्य रजिस्टर में अपने नाम के सामने हस्ताक्षर करेगा।

23. बैठक में कारबार का संव्यवहारित किया जाना.—(1) कार्यकारी समिति की प्रत्येक बैठक की अध्यक्षता अध्यक्ष द्वारा की जाएगी और यदि वह अनुपस्थित होता है तो सदस्यों में से चुना गया पीठासीन अधिकारी बैठक की अध्यक्षता करेगा।

(2) साधारण और असाधारण बैठक में, ऐसी बैठक बुलाई जाने के लिए दी गई सूचना में विनिर्दिष्ट से अन्यथा, कोई कारबार संव्यवहारित नहीं किया जाएगा।

परन्तु पीठासीन अधिकारी किसी कारबार को जो कि अति आवश्यक प्रकृति का हो और जो बैठक की सूचना में दर्ज न था, पर विचार—विमर्श किए जाने की अनुज्ञा दे सकेगा।

(3) कार्यकारी समिति की बैठक में समस्त प्रश्नों पर, उपस्थित सदस्यों के बहुमत द्वारा विनिश्चय किया जाएगा और मतों की बराबरी की दशा में पीठासीन अधिकारी का दूसरा और निर्णायक मत होगा।

24. परिचालन द्वारा विनिश्चय.—(1) जब मामला इतना आवश्यक हो कि इसके विनिश्चय की प्रतीक्षा कार्यकारी समिति की आगामी बैठक तक न की जा सकती हो, तो इसका विनिश्चय, कार्यकारी समिति के समस्त सदस्यों को परिचालन द्वारा किया जाएगा।

(2) जब मामला इतना आवश्यक हो कि कार्यकारी समिति के सदस्यों को परिचालन द्वारा निर्देश भी इसके उद्देश्य को विफल कर रहा हो, तब अध्यक्ष परिषद् की शक्तियों का प्रयोग कर सकेगा।

परन्तु ऐसे मामलों में, अध्यक्ष द्वारा की गई कार्यवाई को कार्यकारी समिति द्वारा इसकी अगली बैठक में अनुसमर्थित किया जाना अपेक्षित होगा।

25. कार्यकारी समिति के सदस्य से भिन्न किसी सदस्य का भाग लेना.—अध्यक्ष, परिषद् के किसी सदस्य को, जो कार्यकारी समिति का सदस्य न हो, कार्यसूची (एजेण्डा) की किसी विशिष्ट मद के लिए, कार्यकारी समिति को किसी बैठक में उपस्थित होने के लिए आमंत्रित कर सकेगा। ऐसा आमन्त्रित कोई सदस्य उस मद से सम्बन्धित विचार विमर्श, चर्चा में भाग लेने के लिए स्वतन्त्र होगा परन्तु उसे मत देने का अधिकार नहीं होगा।

26. बैठकों के कार्यवृत्त.—(1) प्रत्येक बैठक के कार्यवृत्त की प्रति रजिस्ट्रार द्वारा प्रारूपित की जाएगी और आयोजित की गई बैठक की तारीख से 10 दिनों के भीतर अध्यक्ष को उसके प्रतिहस्ताक्षरों हेतु प्रस्तुत की जाएगी जिसके पश्चात् इन को आयोजित की गई बैठक की तारीख से 20 दिन के भीतर, कार्यकारी समिति के प्रत्येक सदस्य को भेजा जाएगा। यदि रजिस्ट्रार द्वारा बैठक के कार्यवृत्त के प्रेषण की तारीख से 15 दिन के भीतर सदस्यों से कोई संशोधन (संशुद्धि)/सुझाव प्राप्त न हो तो उसमें अभिलिखित विनिश्चय प्रभावी होगा।

(2) कार्यकारी समिति द्वारा आगामी बैठक में पुष्टिकरण करने के पश्चात् कार्यवृत्त परिषद् के सदस्यों को भेजे जाएंगे:

परन्तु अध्यक्ष, यदि आवश्यक समझे, उपरोक्त वर्णित 15 दिन की उक्त अवधि के अवसान से पूर्व कार्यकारी समिति के विनिश्चय पर कार्यवाही किए जाने (करने) का निदेश दे सकेगा।

भाग—5

परिषद् और कार्यकारी समिति के सदस्यों को यात्रा और अन्य भत्ते

27. परिषद् और कार्यकारी समिति के सदस्यों को अनुज्ञेय यात्रा और अन्य भत्ते.—(1) परिषद् या कार्यकारी समिति की बैठकों में हाजिर होने के लिए शासकीय सदस्यों को उन्हें लागू नियमों के उपबन्धों के अनुसार, यात्रा भत्ता/दैनिक भत्ता संदत्त किया जाएगा।

(2) परिषद् के गैर सरकारी सदस्यों को, राज्य सरकार के उच्चतर श्रेणी (ग्रेड-1) अधिकारियों को यथा अनुज्ञेय, यात्रा भता अनुज्ञात किया जाएगा।

(3) परिषद् और कार्यकारी समिति के समस्त गैर सरकारी सदस्य परिषद् अथवा कार्यकारी समिति की बैठक में उपस्थित होने के लिए प्रतिदिन केवल 500 रु. (पांच सौ रुपये) की फीस प्राप्त करने के हकदार होंगे जो इस नियम के उप नियम (2) के अधीन उनको यथा अनुज्ञेय यात्रा भता के अतिरिक्त, संदत की जाएगी।

भाग-6

जांचों में अपनाई जाने वाली प्रक्रिया

28. शिकायतों का रजिस्ट्रार को सम्बोधित करना.—किसी व्यक्ति या निकाय द्वारा रजिस्ट्रीकृत व्यवसायी पर वृत्तिक संदर्भ (प्रोफेशनल रिस्पेक्ट) में कुत्सित आचरण का आरोप लगाते हुए लिखित शिकायत (परिवाद) रजिस्ट्रार को सम्बोधित की जाएगी जिसमें शिकायत (परिवाद) के आधारों का विवरण होगा और जिसके साथ मामले के तथ्यों के सम्बन्ध में एक या अधिक घोषणाएं संलग्न होगी।

29. घोषणा की विषय वस्तु.—(1) प्रत्येक घोषणा में घोषणाकर्ता के निवास-स्थान का सही विवरण दिया जाएगा और जहां घोषणा में कथित तथ्य घोषणाकर्ता की निजी जानकारी में नहीं हो तो सूचना के स्रोत को और घोषणाकर्ता के विश्वास के कारणों को और इसकी सत्यता को सही रूप में और पूर्ण रूप से अभिव्यक्त किया जाएगा।

(2) इस नियम के उल्लंघन में की गई घोषणाएं साक्ष्य के रूप में स्वीकृत नहीं की जाएगी।

30. मानसिक अथवा शारीरिक रूप से निशक्त व्यक्ति के रजिस्ट्रीकरण का निलम्बन.—(1) यदि किसी समय शपथ पत्र द्वारा सामने लाया जाता है कि अधिनियम के अधीन रजिस्ट्रीकृत व्यक्ति ऐसी सीमा तक मानसिक और शारीरिक तौर पर निशक्त (निर्योग्य) हो गया है कि ऐसे व्यक्ति का लगातार व्यवसाय में बने रहना लोक कल्याण के विरुद्ध है तो कार्यकारी समिति प्रस्तुत किये गए तथ्यों की जांच कर सकेगी और रजिस्ट्रीकृत व्यवसायी को विनिर्दिष्ट अवधि के लिए चिकित्सा में अपनी वृत्ति या व्यवसाय करने पर निलम्बन का आदेश दे सकेगी।

(2) ऐसे व्यक्ति का रजिस्ट्रीकरण जो चिकित्सा आधार पर सेवा से सेवानिवृत्ति चाहता है, 3 वर्ष की अवधि के लिए अस्थायी तौर पर रद्द किया जाएगा।

परन्तु वह 3 वर्ष की अवधि के पश्चात् पुनः रजिस्ट्रीकृत हो सकेगा/सकेगी, यदि परिषद् द्वारा उसे व्यवसाय के लिए उपयुक्त घोषित कर दिया जाता है।

31. दुषित आचरण वाले व्यक्ति द्वारा रजिस्ट्रीकरण हेतु आवेदन करना या जब रजिस्ट्रीकरण पहले से ही अस्वीकृत किया गया हो.—जब भी रजिस्ट्रार को यह सूचना प्राप्त हो कि चिकित्सा व्यवसायी, जिसने रजिस्ट्रीकरण के लिए आवेदन किया है या जिस का नाम रजिस्ट्रीकरण हेतु पहले ही अस्वीकृत किया जा चुका हो, ऐसे आचरण का दोषी रहा हो जिससे प्रथम दृष्टता वृत्तिक संदर्भ में कुत्सित आचरण गठित होता हो, तो रजिस्ट्रार ऐसी सूचना का संक्षिप्त सार बनाकर अध्यक्ष को सूचित करेगा।

32. संज्ञेय अपराध के लिए दोषसिद्धि.—जब भी परिषद् के कार्यालय में यह सूचना प्राप्त होती है कि रजिस्ट्रीकृत व्यवसायी अपने वृत्तिक आचरण के सम्बन्ध में संज्ञेय अपराध से आरोपित है या किसी न्यायिक या अन्य सक्षम प्राधिकारी के अधीन परिनिर्दिष्ट है या ऐसे आचरण का दोषी है जिससे प्रथम दृष्टया वृत्तिक सन्दर्भ में कुत्सित आचरण गठित होता हो, तो रजिस्ट्रार ऐसी सूचना का संक्षिप्त सार बनायेगा और उसे अध्यक्ष को प्रस्तुत करेगा।

33. शास्ति/रजिस्टर से हटाया जाना.—अधिनियम के अधीन रजिस्ट्रीकृत प्रत्येक व्यक्ति जिसे कार्यकारी समिति द्वारा जांच के पश्चात् अनुचित आचरण का दोषी पाया गया हो, जो ऐसे व्यक्ति की वृत्ति या आजीविका के दृष्टिगत अनुचित हो, तो वह निम्नलिखित शास्तियों में से किसी एक के लिए दायी होगा:—

- (क) चेतावनी या धिग्दंड या धिग्दंड और चेतावनी:
- (ख) औषधि की आधुनिक वैज्ञानिक प्रणाली में व्यवसाय करने या उससे सम्बन्धित कार्य करने पर विनिर्दिष्ट अवधि के लिए निलंबन:
- (ग) रजिस्टर से उसके नाम का हटा दिया जाना।

34. संक्षिप्त सार/शिकायत पर कार्रवाई.—(1) जहां कोई शिकायत दाखिल की गई है तो, शिकायत का संक्षिप्त सार और मामले से सम्बन्धित अन्य समस्त दस्तावेज रजिस्ट्रार द्वारा अध्यक्ष को प्रस्तुत किए जाएंगे, अध्यक्ष, यदि उचित समझे तो रजिस्ट्रार को, रजिस्ट्रीकृत व्यवसायी से रजिस्ट्रीकृत पत्र के माध्यम से स्पष्टीकरण जैसा वह देना चाहे, मांगने का अनुदेश दे सकेगा।

(2) आरोपित व्यवसायी द्वारा रजिस्ट्रार को किसी स्पष्टीकरण सहित अग्रेषित किए गए दस्तावेजों को कार्यकारी समिति को निर्दिष्ट किया जाएगा जो उस पर विचार करेगी और जिसे अतिरिक्त जांच करने और साक्ष्य लेने तथा यदि आवश्यक हो तो विधिक सलाह (परामर्श) लेने की शक्ति होगी।

(3) यदि कार्यकारी समिति की यह राय हो कि प्रथमदृष्टया कोई मामला नहीं बनता है, तो मामले में आगे कार्यवाही नहीं होगी और रजिस्ट्रार कार्यकारी समिति के संकल्प के बारे में शिकायतकर्ता को सूचित करेगा।

(4) यदि कार्यकारी समिति की यह राय हो कि परिस्थितियां आरोपित व्यवसायी को चेतावनी पत्र जारी करना इंगित करती है, तो यह अपना निष्कर्ष परिषद् को भेजेगी और यदि दोनों में से किसी मामले में कार्यकारी समिति की यह राय है कि मामला ऐसा है जिसमें कि जांच की जानी चाहिए तो अध्यक्ष रजिस्ट्रार को कार्यकारी समिति द्वारा जांच संस्थित करने, मामले की सुनवाई करने और अवधारित करने के लिए पग उठाने हेतु निदेश दे सकेगा।

(5) अपचारी रजिस्ट्रीकृत व्यवसायी के विरुद्ध शिकायत पर विनिश्चय छः मास की समय सीमा के भीतर किया जाएगा।

35. कार्यकारी समिति द्वारा जांच की सूचना (नोटिस).—(1) अधिनियम की धारा 22 की उप-धारा (1) के अधीन संचालित की जाने वाली कोई जांच, कार्यकारी समिति के सचिव द्वारा, कार्यकारी समिति की ओर से लिखित में, आरोपित रजिस्ट्रीकृत व्यवसायी को संबोधित करके सूचना (नोटिस) जारी करते हुए आरम्भ की जाएगी।

(2) उपर्युक्त उप-नियम (1) के अधीन जारी की गई सूचना (नोटिस) में आरोप की प्रकृति और विशिष्टियों को विनिर्दिष्ट होगी और आरोपित व्यवसायी को, उस दिन के बारे में, जिस दिन कार्यकारी समिति उसके मामले में कार्रवाई करने का आशय रखती है सूचना देगा और उसमें उससे, उक्त दिन को, कार्यकारी समिति के समक्ष हाजिर होने और लिखित आरोप का उत्तर देने की अपेक्षा की जाएगी।

(3) सूचना (नोटिस) प्ररूप-11 में ऐसी फेरफार के साथ, जैसी परिस्थितियां अपेक्षा करे, दी जाएगी और जांच की तारीख से तीन सप्ताह पूर्व भेजी जाएगी।

36. आरोपित रजिस्ट्रीकृत व्यवसायियों को दस्तावेजों का प्रदाय.—(1) प्रत्येक मामला जिसमें कार्यकारी समिति यह संकल्प करती है कि जांच संस्थित की जानी अपेक्षित है और तदनुसार जांच हेतु सूचना (नोटिस) जारी की गई है, परिवादी, यदि कोई हो, और आरोपित रजिस्ट्रीकृत व्यवसायी, यथास्थिति अपनी

प्रतिरक्षा (प्रतिवाद) या प्रत्युत्तर (उत्तर) के प्रयोजन हेतु और अपने हस्ताक्षर से, लिखित में, उस प्रयोजन के लिए प्रार्थना पर किसी घोषणा की एक प्रति, स्पष्टीकरण या उत्तर या कार्यकारी समिति को अन्य पक्षकार के लिए/की ओर से दिये या भेजे गये अन्य दस्तावेज जिसे ऐसा अन्य पक्षकार उचित सबूत पर सुनवाई में जांच के नोटिस में विनिर्दिष्ट आरोप के समर्थन में या उत्तर में साक्ष्य के लिए उपयोग करने के लिए हकदार होगा, रजिस्ट्रार द्वारा प्रदत्त किए जाने के लिए हकदार होगा।

(2) आरोपित रजिस्ट्रीकृत व्यवसायी द्वारा सूचना (नोटिस) को जारी करने की तारीख और आरोप की सुनवाई हेतु नियत दिन के बीच, अग्रेषित किया गया कोई प्रत्युत्तर (उत्तर), साक्ष्य या कथन या किया गया आवेदन, कार्यकारी समिति के अध्यक्ष द्वारा, ऐसी रीति में, जिसे वह स्वयं या विधिक सलाह के अधीन उचित समझे, निपटाया जाएगा।

(3) समस्त महत्वपूर्ण दस्तावेज जिन्हें मामले की बावत कार्यकारी समिति के समक्ष साक्ष्य के रूप में रखा जाना है, टंकित किए जाएंगे और उनकी एक प्रति प्रत्येक पक्षकार को मामले की सुनवाई से पूर्व दी जाएगी।

37. शिकायतकर्ता (परिवादी) के हाजिर होने की दशा में प्रक्रिया.—(1) जहां शिकायतकर्ता (परिवादी) व्यक्तिगत रूप से या विधि व्यवसायी से भिन्न, अपने प्रतिनिधि के माध्यम से हाजिर होता है वहां निम्नलिखित प्रक्रिया अपनाई जाएगी:—

- (क) रजिस्ट्रार, कार्यकारी समिति के सचिव के रूप में, कार्यकारी समिति के समक्ष आरोपित रजिस्ट्रीकृत व्यवसायी को सम्बोधित जांच की सूचना (नोटिस) पढ़ेगा।
- (ख) शिकायतकर्ता (परिवादी) को अपना मामला स्वयं या अपने प्रतिनिधि के माध्यम से कथित करने और उसके समर्थन में प्रमाण पेश करने के लिए आमंत्रित किया जाएगा। शिकायतकर्ता (परिवादी) के सबूत की समाप्ति पर उसका मामला बन्द किया जाएगा।
- (ग) तत्पश्चात् आरोपित रजिस्ट्रीकृत व्यवसायी को अपना मामला स्वयं या अपने प्रतिनिधि के माध्यम से कथित करने और उसके समर्थन में सबूत पेश करने के लिए आमन्त्रित किया जाएगा। वह कार्यकारी समिति के समक्ष, अपने मामले की बावत, अपने सबूत की समाप्ति पर या उससे पहले केवल एक बार बोल सकेगा।
- (घ) कार्यकारी समिति, आरोपित रजिस्ट्रीकृत व्यवसायी के मामले की समाप्ति पर, यदि उक्त आरोपित रजिस्ट्रीकृत व्यवसायी ने साक्ष्य पेश किए हो तो साधारणतया मामले के उत्तर में परिवादी को सुनेगी, परन्तु किसी विशेष मामले में, जिसमें कार्यकारी समिति ऐसे और साक्ष्य पेश करना उचित समझती है के सिवाए कोई और साक्ष्य नहीं सुनेगी। कार्यकारी समिति की विशेष इजाजत के सिवाए, यदि आरोपित रजिस्ट्रीकृत व्यवसायी कोई साक्ष्य पेश नहीं करता है तो शिकायतकर्ता (परिवादी) को प्रत्युत्तर (उत्तर) में नहीं सुना जाएगा।
- (ङ) जहां कार्यकारी समिति के समक्ष किसी पक्षकार द्वारा कोई साक्ष्य पेश किया जाता है तो पहले उसकी परीक्षा पेश करने वाले पक्षकार द्वारा की जाएगी और तत्पश्चात् विपक्षी पक्षकार द्वारा प्रतिपरीक्षा की जाएगी तथा फिर पेश करने वाले पक्षकार द्वारा पुनः परीक्षा की जाएगी। जहां घोषणाकर्ता उपस्थित नहीं है या वह प्रतिपरीक्षा हेतु हाजिर होने से इंकार करता है, वहां कार्यकारी समिति कोई घोषणा, साक्ष्य ग्रहण करने से इन्कार करने का अधिकार अपने पास आरक्षित रखेगी।
- (च) अध्यक्ष, कार्यकारी समिति के पदेन सभापति के रूप में और उसके माध्यम से कार्यकारी समिति के सदस्य भी किसी साक्ष्य या पक्षकार से प्रश्न कर सकेंगे।

38. शिकायतकर्ता (परिवादी) के हाजिर न होने की दशा में प्रक्रिया.—जहां कोई शिकायतकर्ता (परिवादी) नहीं है या कोई शिकायतकर्ता (परिवादी) हाजिर नहीं होता है, वहां निम्नलिखित प्रक्रिया अपनायी जाएगी:

(क) रजिस्ट्रार, कार्यकारी समिति के सचिव के रूप में कार्यकारी समिति के समक्ष आरोपित रजिस्ट्रीकृत व्यवसायी को सम्बोधित जांच की सूचना (नोटिस) को पढ़ेगा और मामले के तथ्यों का कथन करेगा तथा उक्त समिति के समक्ष ऐसे साक्ष्य पेश करेगा, जिसके द्वारा उसका समर्थन किया गया है।

(ख) तत्पश्चात् आरोपित रजिस्ट्रीकृत व्यवसायी को अपने मामले का स्वयं या अपने प्रतिनिधि के माध्यम से कथन करने और उसके समर्थन में सबूत पेश करने के लिए आमंत्रित किया जाएगा। वह कार्यकारी समिति के समक्ष अपने सबूत की समाप्ति पर या पहले, केवल एक बार, बोल सकेगा।

39. विचार-विमर्श सम्मिलित करना.—कार्यकारी समिति, मामले की सुनवाई की समाप्ति पर उस पर एकान्त में विचार-विमर्श करेगी और विचार-विमर्श की समाप्ति पर अध्यक्ष, कार्यकारी समिति के पदेन सभापति के रूप में विचार-विमर्श के परिणाम का सारांश तैयार करने के प्रयोजन से कार्यकारी समिति से, जैसा कि मामले की परिस्थितियों को लागू हो, सभापति द्वारा किए जाने वाले निम्नलिखित संकल्पों पर मतदान करने की अपेक्षा करेगा:—

(1) आरोपित रजिस्ट्रीकृत व्यवसायी, जिसे उसके विरुद्ध अभिकथित, दण्ड प्रक्रिया संहिता, 1973 में यथा परिभाषित, संज्ञेय अपराध का सिद्धदोष ठहराया गया है, की दशा में:—

“यह कि....., उसके विरुद्ध जांच की सूचना (नोटिस) में यथा अभिकथित, दण्ड प्रक्रिया संहिता, 1973 में यथा परिभाषित संज्ञेय अपराध का सिद्धदोष साबित हुआ है।”

(2) वृत्तिक सन्दर्भ में कुत्सित आचरण के लिए आरोपित रजिस्ट्रीकृत व्यवसायी की दशा में:—

(क) “यह कि कार्यकारी समिति, अब.....के विरुद्ध जांच के नोटिस में अभिकथित आरोपों का विनिश्चय करने के लिए अग्रसर होती है और उन्हें साबित किया गया है या साबित नहीं किया गया है।”

यदि यह संकल्प नहीं लाया जाता है, तो मामले की आगामी सुनवाई, जैसे कार्यकारी समिति निर्दिष्ट करे, कार्यकारी समिति की अगली या भविष्य में अन्य किसी बैठक तक स्थगित रहेगी, और उसकी सुनवाई भविष्य में ऐसी अगली बैठक में स्थगित मामले के रूप में की जाएगी।

यदि उक्त प्रस्ताव लाया जाता है, तो अध्यक्ष द्वारा कार्यकारी समिति से, सभापति द्वारा रखे जाने वाले निम्नलिखित संकल्प पर मतदान करने के लिए, अपेक्षा की जाएगी:—

(ख) “यह कि जांच की सूचना (नोटिस) में.....के विरुद्ध समस्त अभिकथित तथ्य या निम्नलिखित तथ्य (उन्हें विनिर्दिष्ट करते हुए) कार्यकारी समिति को समाधानप्रद रूप में साबित किए गए हैं।”

यदि यह संकल्प लाया जाता है तो कार्यकारी समिति या तो यह न्याय निर्णय करने के लिए अग्रसर हो सकती है कि क्या अभियुक्त रजिस्ट्रीकृत व्यवसायी को साबित हुए तथ्यों पर वृत्तिक कुत्सित आचरण का दोषी साबित किया गया है और रजिस्ट्रार को उसका नाम रजिस्टर से हटाने का निर्देश देगी या अपना निर्णय मुलतवी कर सकती है तथा मामले को अगली या भविष्य में किसी अन्य बैठक तक स्थगित कर सकती है।

(3) घोर अपराध (या उपापराध या अपराध) के सिद्धदोष या वृत्तिक संदर्भ में कुत्सित आचरण के आरोपित रजिस्ट्रीकृत व्यवसायी की दशा में यह विनिश्चित करने के प्रयोजन से कि क्या कार्यकारी समिति का साबित दोषसिद्धि (या तथ्यों) का निर्णय मुलतवी किया जाएगा और अध्यक्ष द्वारा कार्यकारी समिति के पदेन

सभापति के रूप में सभापति द्वारा रखे जाने वाले निम्नलिखित संकल्प पर मतदान करने के लिए कार्यकारी समिति से अपेक्षा की जाएगी:—

- (ग) “यह कि कार्यकारी समिति अब,के विरुद्ध साबित दोषसिद्धि (या तथ्यों) पर अपना निर्णय सुनाने के लिए अग्रसर होती है।”

यदि यह संकल्प नहीं लाया जाता है तो कार्यकारी समिति का निर्णय इसकी अगली या भविष्य में ऐसी किसी अन्य बैठक तक मुलतवी होगा, जैसा यह निर्दिष्ट करेगी और मामले को ऐसी अगली या भविष्य में अन्य बैठक में ऐसे मामले के रूप में लिया जाएगा जिस पर निर्णय मुलतवी किया गया है।

यदि यह संकल्प लाया जाता है, तो कार्यकारी समिति मामले पर तत्काल अपना निर्णय सुनाने के लिए अग्रसर होगी और अध्यक्ष द्वारा कार्यकारी समिति के पदेन सभापति के रूप में सभापति द्वारा रखे जाने वाले निम्नलिखित संकल्प पर मतदान करने के लिए इससे अपेक्षा की जाएगी :—

दोषसिद्धि की दशा में:—

- (घ) “किके विरुद्ध जांच की सूचना (नोटिस) में अभिकथित घोर अपराध (या उपापराध या अपराध) का सिद्धदोष साबित होने पर, रजिस्ट्रार को, कार्यकारी समिति के सचिव के रूप में रजिस्टर से उसका नाम हटाने के लिए निदेश दिया जाए।

वृत्तिक सन्दर्भ में कुत्सित आचरण से आरोपित व्यवसायी की दशा में:—

- (ङ) “यह कि कार्यकारी समिति, अब,को वृत्तिक सन्दर्भ में (कुत्सित आचरण का दोषी न्यायनिर्णीत करती है और रजिस्ट्रार को,.....का नाम रजिस्टर से हटाने के लिए निदेश देती है।”

यदि, यथास्थिति, संकल्प (घ) या (ङ) नहीं लाया जाता है, तो अध्यक्ष कार्यकारी समिति का निर्णय निम्नलिखित रूप में घोषित कर सकेगा।

“यह कि कार्यकारी समिति श्री..... का नाम रजिस्टर से हटाने के लिए रजिस्ट्रार को निदेश देना उचित नहीं समझती है।”

40. स्थगित सुनवाई का नोटिस.—(1) अन्य सत्र के लिए सुनवाई का स्थगन या निर्णय को मुलतवी करने की दशा में, कार्यकारी समिति, पुनः विचार के लिए आने वाले मामले पर आगामी विचार के लिए नियत दिन को आरोपित रजिस्ट्रीकृत व्यवसायी और शिकायतकर्ता (परिवादी) (यदि कोई हो) को सुन सकती है तथा परिवादी और व्यवसायी को, ऐसे कोई और तथ्य या साक्ष्य, जिन्हें वे कार्यकारी समिति के समक्ष रखना चाहते हों, लिखित रूप में रजिस्ट्रार को देने के लिए निवेदन किया जाएगा।

(2) सूचना (नोटिस) इस प्रकार से दी जाएगी कि दिन जिसको कि सूचना (नोटिस) दी गई है और नियत दिन के मध्य कम से कम 28 दिन अनुज्ञात किए जा सकें। जब तक इस नियम की अनुपालना में पहले से रजिस्ट्रार को उनका विवरण नहीं दिया गया हो, तब तक किसी पक्षकार द्वारा जांच के विचार के लिए प्रस्तुत कोई और तथ्य या साक्ष्य कार्यकारी समिति द्वारा प्राप्त नहीं किए जाएंगे या उन पर विचार नहीं किया जाएगा।

41. सुनवाई.—(1) कार्यकारी समिति के समक्ष आगामी विचार के लिए आने वाले मामले पर रजिस्ट्रार, कार्यकारी समिति के सचिव के रूप में, यदि आवश्यक हो तो कार्यकारी समिति को तथ्यों का कथन करेगा और मामले की स्थिति स्पष्ट करेगा। आरोपित रजिस्ट्रीकृत व्यवसायी को तत्पश्चात कार्यकारी समिति के समक्ष बोलने के लिए या तो व्यक्तिगत रूप से या प्रतिनिधि के माध्यम से जिसकी उसने रजिस्ट्रार को सम्यक रूप से सूचना (नोटिस) दी हो, आमन्त्रित किया जाएगा। शिकायतकर्ता (परिवादी) (यदि कोई हो) को भी

कार्यकारी समिति के समक्ष या तो व्यक्तिगत रूप से या अपने प्रतिनिधि के माध्यम से बोलने और कोई और साक्ष्य, जिसकी उसने सम्यक रूप से सूचना (नोटिस) दी हो, उक्त समिति के समक्ष रखने के लिए आमन्त्रित करेगा।

(2) कार्यकारी समिति, आगामी सुनवाई की समाप्ति पर मामले पर एकांत में विचार-विमर्श करेगी और विचार-विमर्श के पश्चात् अध्यक्ष, कार्यकारी समिति के पदेन सभापति के रूप में उक्त समिति से, उसी संकल्प पर जैसे कि मूल सुनवाई पर स्थगित मामले तथा ऐसे मामले, जिसमें किसी संकल्प पर, यथास्थिति, नियम 39 के उपनियम (3) (ग), (3) (घ) या (3) (ङ) के अधीन निर्णय मुलतवी किया गया था में मतदान करने की अपेक्षा करेगा।

42. नाम को हटाने के लिए संकल्प.—(1) यदि कार्यकारी समिति की राय में विशिष्टतः परिषद् या भारतीय आयुर्विज्ञान परिषद् द्वारा विहित किसी आचार संहिता के अधीन चिकित्सा वृत्ति के सम्बन्ध में आरोपी रजिस्ट्रीकृत व्यवसायी का आचरण (कुत्सित) पाया जाता है तो यह अधिनियम की धारा 22 के उपबन्धों के अनुसार उक्त व्यवसायी का नाम रजिस्टर से हटाने के लिए समिति के अध्यक्ष द्वारा सभापति के रूप में रखे गए औपचारिक संकल्प द्वारा अध्यक्ष को सिफारिश कर सकती है।

(2) कार्यकारी समिति द्वारा धारा 22 के उपबन्धों के अधीन रजिस्ट्रीकृत व्यवसायी का नाम हटाने के लिए आदेश परिषद् द्वारा पुष्टि के अध्याधीन होगा तथा ऐसी पुष्टि की तारीख से प्रभावी होगा।

43. नाम को हटाने का नोटिस.—(1) रजिस्ट्रार अधिनियम की धारा 22 के उपबन्धों के अनुसरण में रजिस्टर से किसी नाम के हटाने पर तत्काल ऐसे हटाए जाने का नोटिस रजिस्ट्रीकृत व्यवसायी को भेजेगा और ऐसा नोटिस उक्त व्यवसायी के अन्तिम ज्ञात पते पर या रजिस्ट्रीकृत पते पर रजिस्ट्रीकृत पत्र द्वारा भेजा जाएगा। रजिस्ट्रार ऐसे हटाए जाने की सूचना तत्काल संकायाध्यक्ष (डीन) या सचिव या निकाय या निकायों के समुचित अधिकारी को जिससे कि उक्त व्यवसायी ने अर्हता या अर्हताएं प्राप्त की हैं, भी भेजेगा।

(2) कोई व्यक्ति जिसका नाम इन नियमों के उपबन्धों के अधीन रजिस्टर से हटा दिया गया है तत्काल रजिस्ट्रार को अपना रजिस्ट्रीकरण प्रमाण पत्र अभ्यर्पित करेगा तथा इस प्रकार हटाया गया नाम शासकीय राजपत्र में प्रकाशित किया जाएगा।

44. अनुज्ञापन निकाय को सूचना.—रजिस्ट्रार अधिनियम की धारा 22 के उपबन्धों के अनुसार परिषद् के आदेश द्वारा रजिस्टर से किसी नाम के हटाए जाने के पश्चात् एक मास के भीतर, उस निकाय को जिससे व्यवसायियों ने अपनी अर्हताएं प्राप्त की हो, ऐसे नामों की एक सूची भेजेगा तथा प्रत्येक अनुज्ञापन निकाय का ध्यान कार्यकारी समिति के निम्नलिखित संकल्प की ओर आकृष्ट करेगा :—

“कार्यकारी समिति यह सिफारिश करती है कि कोई व्यक्ति जिसका नाम एक बार रजिस्टर से हटाया गया है और उक्त रजिस्टर में प्रत्यावर्तित नहीं किया गया है, परिषद् को पूर्व संदर्भ के बिना, कोई नई अर्हता, जो अधिनियम के उपबन्धों के अधीन रजिस्ट्रीकृत करने योग्य है, अभिप्राप्त करने के लिए परीक्षा में प्रवेश के लिए अनुज्ञात नहीं किया जाएगा।”

भाग-7

रजिस्टर में नाम का प्रत्यावर्तन

45. नाम को पुनः प्रविष्ट करने की शक्ति.—परिषद्, यदि यह उचित समझे, किसी व्यक्ति, जिसका नाम रजिस्टर से हटा दिया गया है, से आवेदन प्राप्त करने पर अधिनियम की धारा 22 के अधीन रजिस्ट्रार को उसका नाम रजिस्टर में पुनः प्रविष्ट करने के लिए निर्देश दे सकेगी।

46. नाम की पुनः प्रविष्टि के लिए आवेदन.—कोई व्यक्ति, जिसका नाम परिषद् के निदेश से धारा 22 के अधीन रजिस्टर से हटाया गया है, परन्तु जो फिर भी अधिनियम के अधीन रजिस्ट्रीकृत किए जाने हेतु उसे हकदार बनाने वाली अर्हता रखता है, अपने नाम की रजिस्टर में पुनः प्रविष्टि के लिए प्ररूप-3 में परिषद्

को आवेदन कर सकता है तथा ऐसे प्रत्येक आवेदन की बावत निम्नलिखित प्रक्रिया का अनुसरण किया जाएगा:—

(1) आवेदन, लिखित में, परिषद् को सम्बोधित किया जाएगा और आवेदक द्वारा हस्ताक्षरित होगा तथा उन आधारों का कथन करेगा जिन पर आवेदन किया गया है।

(2) आवेदन के साथ निम्नलिखित संलग्न किए जाएंगे :—

(क) मामले के तथ्य उपवर्णित करते हुए और यह कथन करते हुए कि वह मूल रूप से रजिस्ट्रीकृत व्यक्ति है, आवेदक द्वारा की गई घोषणा ; और

(ख) निम्नलिखित दस्तावेजों में से एक:—

(i) आवेदक का डिप्लोमा।

(ii) उसका मूल रूप में रजिस्ट्रीकरण प्रमाण पत्र, यदि उसे पहले ही उसके द्वारा वापस नहीं किया गया है।

(iii) उसकी पहचान के बारे में, अधिनियम के अधीन रजिस्ट्रीकृत दो व्यवसायियों से प्ररूप-4 में प्रमाण पत्र।

(3) आवेदन में दिए गए कथन को अधिनियम के अधीन रजिस्ट्रीकृत दो व्यवसायियों द्वारा, जो उस स्थान के पड़ोस के निवासी हों, जहां आवेदक अपना नाम हटाए जाने के पश्चात् से रह रहा है, लिखित में दिए जाने वाले प्रमाण-पत्रों द्वारा भी सत्यापित किया जाएगा तथा वे उसका वर्तमान में अच्छा चरित्र भी प्रमाणित करेंगे।

(4) रजिस्ट्रार, परिषद् द्वारा आवेदन पर विचार करने से पूर्व, उसे उन अनुज्ञापन निकायों, जिनकी अहर्ताएं आवेदक द्वारा उस समय धारित की गई थी जब उसका नाम रजिस्टर से हटाया गया था, को अधिसूचित करेगा तथा फिर वह व्यक्ति या निकाय (यदि कोई हो), जिसके परिवाद पर आवेदक का नाम हटाया गया था को सम्बोधित पत्र द्वारा आवेदन और उस समय, जब परिषद् उस पर विचार करने का आशय रखती है कि बावत सूचना (नोटिस) देगा।

(5) परिषद् आवेदन पर विचार करेगी और, यदि यह उचित समझे, तो आवेदक से और साक्ष्य या स्पष्टीकरण की अपेक्षा करने के लिए इस पर विचार भविष्य में किसी तारीख को स्थगित कर सकती है।

(6) उप नियम (3) में निर्दिष्ट आवेदन और प्रमाण-पत्र ऐसे फेरफार के साथ जो परिस्थितियों के अनुसार अपेक्षित हो, कमशः प्ररूप-5 और 6 में होंगे। मुद्रित प्ररूप रजिस्ट्रार द्वारा अपने कार्यालय में रखे जाएंगे और वह उन्हें आशयित आवेदक को प्रदत्त करेगा।

भाग-8

अपीलें

47. अपीलें.—(1) अधिनियम की धारा 24 के अधीन परिषद् को प्रस्तुत प्रत्येक अपील रजिस्ट्रार को संबोधित की जाएगी और उसके साथ हिमाचल प्रदेश चिकित्सा परिषद् (फीस) नियम, 2011 में यथा विहित फीस संलग्न की जाएगी।

(2) प्रत्येक अपील सम्यक् रूप से प्रस्तुत की गई समझी जाएगी, यदि उसे रजिस्ट्रीकृत डाक द्वारा भेजा गया है या व्यक्तिगत रूप से या आवेदक द्वारा, लिखित में प्राधिकृत अभिकर्ता के माध्यम से परिषद् के कार्यालय में परिदत्त किया गया है।

(3) प्रत्येक अपील के साथ उस आदेश की प्रमाणित प्रति संलग्न की जाएगी, जिसके विरुद्ध अपील की गई है और उसमें निम्नलिखित विशिष्टियां अंतर्विष्ट होंगी:—

(क) आदेश, जिसके विरुद्ध अपील की गई है।

(ख) संक्षेप में, परन्तु स्पष्टतः उपवर्णित अपील के आधार।

(4) प्रत्येक अपील आवेदक द्वारा हस्ताक्षरित की जाएगी और सिविल प्रक्रिया संहिता, 1908 में अपील के आधारों के सत्यापन हेतु अधिकथित रीति में सत्यापित की जाएगी।

48. अपीलों की सुनवाई के लिए प्रक्रिया.—(1) यदि अपील नियम 47 में अधिकथित रीति में प्रस्तुत नहीं की जाती है या इसके साथ विहित फीस संलग्न नहीं की गई है तो यह संक्षेपत अस्वीकृत की जाएगी।

(2) यदि अपील स्वीकृत की जाती है, तो परिषद् अपीलार्थी को और जहां अपील अपीलार्थी से भिन्न किसी व्यक्ति के सम्बन्ध में पारित, रजिस्ट्रार के आदेश के विरुद्ध है वहां ऐसे व्यक्ति को सुनवाई का अवसर देने के पश्चात् विनिश्चित करेगी। परिषद् का प्रत्येक विनिश्चय रजिस्ट्रार को संसूचित किया जाएगा जो उसे प्रभावशील (प्रभावी) करेगा।

भाग—9

परिषद् के लेखों और निधियों का रख-रखाव

49. सम्पत्ति का प्रबन्धन.—रजिस्ट्रार परिषद् की समस्त सम्पत्तियों के रख-रखाव के लिए उत्तरदायी होगा, और परिषद् की जंगम (स्थायी) सम्पत्ति का स्टॉक रजिस्टर रखेगा।

50. परिषद् के धन का बैंक में निक्षेप.—परिषद् भारतीय स्टेट बैंक में खाता खोलेगी और अधिनियम की धारा 13 की उपधारा (1) के अधीन इसके द्वारा प्राप्त समस्त धन नियम 51 के उपबन्ध के अध्वधीन बैंक में निक्षिप्त किया जाएगा।

51. परिषद् की ओर से धन की प्राप्ति.—परिषद् को संदेय समस्त धन, परिषद् की ओर से रजिस्ट्रार या उसके द्वारा इस निमित्त लिखित में प्राधिकृत परिषद् के किसी अन्य कर्मचारी द्वारा प्राप्त किया जाएगा और जिस दिन यह प्राप्त किया जाता है उससे अगले दिन बैंक में निक्षिप्त किया जाएगा। प्राप्त धन के बदले में रजिस्ट्रार द्वारा प्ररूप—7 में यथा विहित प्ररूप में रसीद प्रदान की जाएगी।

52. परिषद् के लेखे का प्रचालन.—परिषद् का लेखा रजिस्ट्रार और अध्यक्ष द्वारा संयुक्त रूप से प्रचलित किया जाएगा (और अध्यक्ष की अनुपस्थिति में इनको रजिस्ट्रार और उपाध्यक्ष द्वारा प्रचालित किया जाएगा)।

53. स्थाई अग्रिम.—रजिस्ट्रार पांच हजार रुपये का स्थाई अग्रिम अपने पास रखेगा।

54. लेखों का अनुरक्षण.—परिषद् की ओर से प्राप्त की गई अथवा व्यय किये गये समस्त धन को प्ररूप—8 में विहित प्ररूप में अनुरक्षित की जाने वाली साधारण रोकड़ बही में, रजिस्ट्रार के प्रत्यक्ष पर्यवेक्षण के अधीन, और उसकी अनुपस्थिति में उसके द्वारा लिखित में प्राधिकृत परिषद् के किसी कर्मचारी के पर्यवेक्षण के अधीन, बिना किसी आरक्षण के परिषद् के लेखों में लिया जाएगा।

55. लेखों की संपरीक्षा.—(1) परिषद् के लेखों की संपरीक्षा, राज्य सरकार के वित्त विभाग के स्थानीय निधि लेखा परीक्षक के द्वारा प्रतिवर्ष की जाएगी।

(2) संपरीक्षा के ब्यौरे,— परीक्षक, के ब्यौरे परीक्षक, स्थानीय निधि लेखा, वित्त विभाग, हिमाचल प्रदेश सरकार द्वारा परिषद् को संसूचित किए जाएंगे, और कार्यकारी समिति द्वारा उस पर विचार करने के

पश्चात्, लेखों की संपरीक्षा रिपोर्ट और संपरीक्षित विवरणी स्वास्थ्य एवं परिवार कल्याण विभाग को अग्रेषित की जाएगी। उसी समय संपरीक्षा रिपोर्ट की प्रतियां परिषद् के समस्त सदस्यों को सूचनार्थ, परिचालित (भेजी जाएगी) की जाएगी।

56. लेखों के वार्षिक विवरण की तैयारी.—रजिस्ट्रार प्रत्येक वर्ष जुलाई मास में, 31 मार्च को समाप्त होने वाले पूर्ववर्ती वित्तीय वर्ष की आय और व्यय का विवरण तैयार करवाएगा। और ऐसे मामलों पर जो उसे परिषद् के नोटिस में लाये जाने के लिए आवश्यक प्रतीत हो परिषद् का ध्यान आकर्षित करेगा।

57. प्राक्कलनों की तैयारी.—(1) रजिस्ट्रार, प्रत्येक वर्ष अक्टूबर मास में या ऐसी तारीख को जिससे अध्यक्ष नियत करें, आगामी वर्ष के प्रथम अप्रैल से प्रारम्भ होने वाले वर्ष के लिये परिषद् की आय और व्यय का प्राक्कलन तैयार करवाएगा। और उसे परिषद् को प्रस्तुत करेगा।

(2) प्राक्कलनों में, परिषद् के दायित्वों को पूरा करने, और अधिनियम के उपबन्धों को सफलतापूर्वक कार्यान्वित करने के लिए उपबंध किए जाएंगे।

(3) परिषद् उप नियम (1) के अधीन उसे प्रस्तुत प्राक्कलनों पर विचार करेगी और इन्हें परिवर्तन के साथ, और बिना परिवर्तन के, जैसा उचित समझे, मंजूर कर सकेगी।

58. अनुपूरक प्राक्कलनों की तैयारी.—परिषद्, वर्ष, के दौरान जिसके लिए कोई प्राक्कलन मंजूर हुआ था, किसी भी समय, अनुपूरक प्राक्कलन तैयार करवा सकेगी और उसे प्रस्तुत करेगी। प्रत्येक ऐसे अनुपूरक प्राक्कलन पर, परिषद् द्वारा, उसी रीति में, जैसे कि यह मूल वार्षिक प्राक्कलन हो, विचार किया जाएगा। कोई व्यय जो नियम 57 के उपनियम (3) के अधीन मंजूर (स्वीकृत) प्राक्कलनों में या अनुपूरक प्राक्कलनों में सम्यक् रूप से उपबंधित नहीं है, उपगत नहीं किया जाएगा।

59. बिलों का संदाय.—कर्मचारीवृन्द के समस्त वेतन बिल और धन के दावे के रूप में प्रस्तुत किये गए अन्य बाउचर, परिषद् के लेखाकार द्वारा प्राप्त और परीक्षित किये जाएंगे। यह समाधान हो जाने पर कि दावा सही है, बिल—

(क) यदि दावा कर्मचारीवृन्द के वेतन बिल से सम्बन्धित है या एक हजार रुपये से अनधिक रकम के लिए है तो, रजिस्ट्रार द्वारा, और (ख) अन्य मामलों में अध्यक्ष द्वारा, पारित किए जाएंगे।

60. प्रतिदाय.—परिषद् द्वारा फीस के लेखे पर प्राप्त रकम का, किसी भी परिस्थिति में प्रतिदाय नहीं किया जाएगा। इस प्रकार प्राप्त की गई रकम परिषद् के लेखे में जमा रहेगी।

परन्तु यह कि किसी व्यवसायी द्वारा विहित फीस से अधिक रकम संदत किये जाने पर, वह रकम परिषद् के उचंत खाते में जमा की जाएगी। और यदि तीन वर्ष की अवधि के भीतर दावा किया जाता है तो रकम प्रतिसंदत की जा सकेगी और यदि उपर्युक्त अवधि के भीतर प्रतिदाय हेतु दावा नहीं किया जाता है तो रकम परिषद् के खाते में जमा कर दी जाएगी।

61. नियमों का निर्वचन.—इन नियमों के किसी निर्वचन या स्पष्टीकरण के मामले में राज्य सरकार का विनिश्चय आन्तिम होगा।

62. प्रशासनिक रिपोर्ट.—परिषद् वार्षिक प्रशासनिक रिपोर्ट प्रकाशित करेगी और सरकार को अनुमोदन हेतु भी भेजेगी।

प्ररूप-1
नियम 5 देखें

परिषद् के सदस्यों की विशिष्टियां दर्शाते हुए वही/रजिस्टर

नाम	पता	क्या नामनिर्दिष्ट या निर्वाचित है (जिस निर्वाचक मण्डल का वह प्रतिनिधित्व व्यपदेशन करता है)	पदावधि	पदावधि के प्रारम्भ की तारीख
1	2	3	4	5

सामान्य अनुक्रम में तारीख जिस को पदावधि का अवसान होना है	यदि नियुक्ति को स्तम्भ (6) में वर्णित नियत तारीख से पूर्व (पर्यवसित) समाप्त किया गया है तो पूर्वतर(पर्यवसान) समाप्ति की तारीख और कारण	टिप्पणियां
6	7	8

प्ररूप-2
(नियम 35 देखें)

हिमाचल प्रदेश चिकित्सा परिषद् अधिनियम, 2003 की धारा 22 के अधीन जांच सम्बन्धी कार्यवाहियों में हाजिर होने के लिए आरोपित रजिस्ट्रीकृत व्यवसायी को सूचना (नोटिस)

महोदय,

हिमाचल प्रदेश चिकित्सा परिषद् की कार्यकारी समिति की ओर से, मैं आप को सूचना (नोटिस) देता हूँ कि कार्यकारी समिति के समक्ष की गई शिकायत (परिवाद) और दिए गये साक्ष्य जिसके द्वारा शिकायतकर्ता (परिवादी) ने आपके विरुद्ध निम्नलिखित आरोप लगाये है।

अर्थात् :-1.....
2.....

यह सूचित किया जाता है कि अधिनियम की धारा 22 के अधीन आपकी परीक्षा की जानी अपेक्षित है और मुझे आप को यह सूचना (नोटिस) देने के लिए निर्दिष्ट किया है कि दिन200 ... को, कार्यकारी समिति की बैठकस्थान पर बजे आपके विरुद्ध उपर्युक्त वर्णित आरोपों पर विचार करने और विनिश्चय करने के लिए कि क्या उन्हें, हिमाचल प्रदेश चिकित्सा परिषद् अधिनियम, 2003 (2003 का 16) की धारा 22 के अनुसरण में, आप का नाम रजिस्टर से हटाए जाने के लिए निदेश देना चाहिए या नहीं।

आप से उपर्युक्त आरोपों का लिखित में जबाब देने और उपर्युक्त वर्णित स्थान और समय पर कोई खण्डन (प्रत्याख्यान) या प्रतिरक्षा (सफाई) जो आप देना चाहते हैं को साबित करने के लिए कार्यकारी समिति के समक्ष उपस्थित होने का निवेदन किया जाता है और आपको एतद्वारा सूचित किया जाता है कि आप यदि अनुरोध के अनुसार उपस्थित नहीं होते हैं, तो कार्यकारी समिति, आप भी अनुपस्थिति में उक्त आरोपों की सुनवाई करके और विनिश्चय कर सकेगी।

आरोपों के सम्बन्ध में या उससे प्रतिरक्षा (सफाई) में कोई जवाब या अन्य संसूचना या आवेदन जो आप देने (प्रस्तुत करने) की वांछा रखते हो, अद्योहस्ताक्षरी को सम्बोधित और पारेषित किए जाएंगे रखते हो, जिससे कि, उक्त मामले की सुनवाई के लिए नियत दिन से पूर्व दिन से अन्यून अवधि के भीतर उस तक पहुंच जाए।

रजिस्ट्रार

प्ररूप-3
(नियम 46 देखें)

चिकित्सा व्यवसायियों के रजिस्टर से धारा 22 के अधीन हटाये गये नाम की पुनः प्रविष्टि हेतु आवेदन:-

सेवा में,

हिमाचल प्रदेश चिकित्सा परिषद्

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महोदय,

मैं (क) अद्योहस्ताक्षरी (ख)..... अर्हताएं रखते हुए एतद्वारा सत्यनिष्ठा से निम्नलिखित घोषणा करता हूं :-

वर्ष (ग) में मेरा नाम निम्नलिखित अर्हताओं की बावत अर्थात् (घ) के रजिस्टर में सम्यक् रूप से रजिस्ट्रीकृत किया गया था, और मेरा नाम हटाये जाने की तारीख को मैं निम्नलिखित अतिरिक्त अर्हता अर्थात् (ङ) की बावत रजिस्ट्रीकृत था।

रजिस्ट्रार ने रजिस्टर से मेरा नाम (च) नवीकरण फीस के संदाय के व्यतिक्रम में हटाया है।

रजिस्टर से मेरा नाम हटाये जाने से मैं (छ) स्थान पर निवास कर रहा हूं और (ज) मेरा व्यवसाय है।

मैं यह निवेदन करता हूं कि (झ) के रूप में मेरा नाम रजिस्टर में पुनः स्थापित किया जाए।

भवदीय,

हस्ताक्षर

नाम और पता.....

रजिस्ट्रीकरण संख्या.....

टिप्पण:-

- (क) पूरा नाम लिखें (अन्तः स्थापित करें)
- (ख) अर्हता लिखें (अन्तः स्थापित करें)
- (ग) रजिस्ट्रीकरण की तारीख लिखें (अन्तः स्थापित करें)
- (घ) अर्हताएं लिखें (अन्तः स्थापित करें)
- (ङ) अतिरिक्त अर्हताएं लिखें (अन्तः स्थापित करें)
- (च) हटाये जाने की तारीख लिखें (अन्तः स्थापित करें)
- (छ) विशिष्टियां दें।
- (ज) वृत्तिक व्यवसाय से सम्बन्धित विशिष्टियां लिखें (अन्तः स्थापित करें)
- (झ) रजिस्ट्रीकृत चिकित्सा व्यवसायी।

प्ररूप-4
(नियम 46(2) (ख) (iii) देखें)

आवेदन के समर्थन में प्रमाण पत्र

यह प्रमाणित किया जाता है कि जिसका नाम हिमाचल प्रदेश चिकित्सा परिषद् अधिनियम 2003 (2003 का 16) के अधीन चिकित्सा व्यवसायियों के रजिस्टर में पहले से ही है, मेरा सुपरिचित है और चरित्रवान है।

नाम:-

(प्रमाणित करने वाले व्यक्ति का नाम)

पता:-

अर्हता:-

तारीख:-

प्रमाणित करने वाले व्यक्ति के हस्ताक्षर,
रजिस्ट्रीकरण संख्या.....

प्ररूप-5
(नियम 46 (6) देखें)

अधिनियम की धारा 22 के अधीन आवेदक द्वारा चिकित्सा व्यवसायियों के रजिस्टर में नाम की पुनः प्रविष्टि
(प्रवेश) हेतु कानूनी घोषणा

सेवा में,

हिमाचल प्रदेश चिकित्सा परिषद्

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.....

.....

- (1) मैं, अद्योहस्ताक्षरी (क) अब की अर्हताएं रखते हुए (ख) सत्यनिष्ठा (ख) सत्यनिष्ठा से घोषणा करता हूँ कि निम्नलिखित तथ्य मेरे मामले के हैं, जिनके आधार पर मैं चिकित्सा व्यवसायियों के रजिस्टर में अपने नाम की पुनः प्रविष्टि चाहता हूँ।
- (2) (ग)..... को मेरा नाम निम्नलिखित अर्हताओं के बारे में अर्थात् रजिस्टर में सम्यक् रूप से रजिस्ट्रीकृत किया गया था, (घ) अर्थात् जांच की तारीख को मैं उन्हीं अर्हताओं की बावत रजिस्ट्रीकृत था, (ङ) और निम्नलिखित अतिरिक्त अर्हताओं की बावत भी रजिस्ट्रीकृत था, अर्थात:-
- (3) (च).....दिन..... को की गई जांच पर, (छ) के..... द्वारा, हिमाचल प्रदेश चिकित्सा परिषद् को की गई शिकायत पर, परिषद् ने (ज) मुझे से अधिरोपित करते हुए, मेरा नाम रजिस्टर से हटाये जाने का निदेश दिया था।
- (4) रजिस्टर से मेरा नाम हटाये जाने से मैं (झ) स्थान पर निवास कर रहा हूँ और मेरा व्यवसाय है।

- (5) यह मेरा आशय (अभिप्राय) है कि (ज) के रूप में मेरा नाम रजिस्टर में पुनः प्रविष्ट किया जाए।
- (6) आवेदन के आधार (ट) है।

हस्ताक्षरित

मेरे समक्ष स्थानमें (तारीख)को घोषित किया गया।

मजिस्ट्रेट या नोटरी पब्लिक

टिप्पण:—

- (क) पूरा नाम लिखें (अन्तःस्थापित करें)
- (ख) अर्हताएं, यदि कोई है लिखें अन्तःस्थापित करें
- (ग) तारीख लिखें (अन्तःस्थापित करें)
- (घ) जांच की तारीख लिखें (अन्तःस्थापित करें)
- (ङ) अर्हताएं वर्णित करें।
- (च) शिकायतकर्ता का नाम और पता लिखें (अन्तःस्थापित करें)
- (छ) आरोप जिस पर नाम हटाया गया था लिखें (अन्तःस्थापित करें)
- (ज) पता लिखें (अन्तःस्थापित करें)
- (झ) वृत्तिक व्यवसाय से सम्बन्धित विशिष्टियां लिखें (अन्तःस्थापित करें)
- (ञ) आवेदन में दिए गए (वर्णित) समस्त तथ्य और आधार स्पष्ट और संक्षिप्त रूप में कथित होने चाहिए।

प्ररूप-6

(नियम 46 (6) देखें)

प्ररूप-5 में आवेदन के पैरा (4) और (5) की विषय वस्तु के सत्यापन के बारे में प्रमाणपत्र

मैं..... निम्नलिखित प्रमाणित करता हूँ:—

- (1) मेरी रजिस्ट्रीकरण संख्या..... है।
- (2) मैंने के आवेदन के पैरा (4) और (5) पढ़ लिए हैं और कथन करता हूँ कि मैं उक्त..... दोनों से अवगत किया गया हूँ और चूंकि उसका नाम रजिस्टर से हटा दिया गया था मैं उसे एक अच्छे चरित्र का व्यक्ति समझता हूँ और मेरे द्वारा किए गए कथन (स्टेटमेन्ट्स) मेरे ज्ञान, सूचना और विश्वास से सही है।

हस्ताक्षर

प्ररूप-7
(नियम 51 देखें)

पावती (रसीद)

हिमाचल प्रदेश चिकित्सा परिषद्, साधारण नियम, 2011 का नियम 51 और हिमाचल प्रदेश चिकित्सा परिषद् फीस नियम, 2011 का नियम 3 (3) देखें	हिमाचल प्रदेश चिकित्सा परिषद् (साधारण) नियम, 2011 का नियम 22 और हिमाचल प्रदेश चिकित्सा परिषद् (फीस) नियम, 2011 का नियम 3 (3) देखें
हिमाचल प्रदेश चिकित्सा परिषद्।	हिमाचल प्रदेश चिकित्सा परिषद्
वही संख्या.....	वही संख्या.....
क्रम संख्या.....	क्रम संख्या.....
तारीख.....	तारीख.....
श्री/श्रीमति..... से रुपये..... की रकम..... के लेखे रोकड़/अदायगी आदेश के माध्यम से प्राप्त की गई है।	श्री/श्रीमति सेरुपये) की रकम..... के लेखे रोकड़/अदायगी आदेश के माध्यम से प्राप्त की गई है।
रजिस्ट्रार	रजिस्ट्रार

प्ररूप-8
(नियम 54 देखें)

हिमाचल प्रदेश राज्य चिकित्सा परिषद्

साधारण रोकड़ वही

मास और तारीख		वर्गीकृत संक्षिप्त सार की पन्ना फोलियो संख्या		विभागीय मुख्य लघु और विस्तृत शीर्ष और उपशीर्ष के ब्यौरे		पावती (रसीद की विशिष्टियां और जिससे प्राप्त किया गया है व्यक्ति का नाम	
1		2		3		4	
बैंक (रसीद) पावती की संख्या और तारीख	रकम	कुल दैनिक		बैंक को प्रेषित बैंक (रसीद) पावती की संख्या तारीख	रकम	मास	
5	6	7	8	9	10		

तारीख	वर्गीकृत सार की पन्ना (फोलियो) संख्या	विभागीय मुख्य/उपशीर्ष और लेखे के उप शीर्ष के ब्यौरे	प्रभार की विशिष्टियां और पाने वाले का नाम
11	12	13	14

बाउचर की संख्या	चैक की संख्या और तारीख	रकम	कुल दैनिक
15	16	17	18

आदेश द्वारा,
हस्ताक्षरित/—
सचिव (स्वास्थ्य)।

[Authoritative English Text of this Department notification No. HFW-B(A)2 2/2001-loose, dated 4.1.2012 as required under clause (3) of article 348 of the Constitution of India].

HEALTH AND FAMILY WELFARE DEPARTMENT

NOTIFICATION

Shimla-2, 4th Jan., 2012

HFW-B(A) 2-2/2001-loose.—Whereas the draft rules titled as the Himachal Pradesh Medical Council (General) rules, 2007 were published in the Rajpatra, Himachal Pradesh (Extra-Ordinary) on 19.9.2007 vide notification of even number dated 16.8.2007 for inviting objections and suggestions from person likely to be affected thereby as required under section-31 of the Himachal Pradesh Medical Council Act, 2003, within a period of 30 days from the date of publications ;

And, whereas no objection/suggestion has been received in this behalf from the general public during the stipulated period;

Now, therefore, in exercise of the powers conferred by section-31 of the Himachal Pradesh Medical Council Act, 2003, the Governor of Himachal Pradesh is pleased to make the following rules, namely:-

DRAFT RULES PART-I PRELIMINARY

1. Short title.—These rules may be called the Himachal Pradesh Medical Council (General) Rules, 2011.

2. Definitions.—(1) In these rules, unless there is anything repugnant in the subject or context;-

- (a) “Act” means the Himachal Pradesh Medical Council Act, 2003 (Act No. 16 of 2003);
- (b) “Appendix” means an appendix appended to these rules;
- (c) “Complainant” means any person who makes a complaint under the Act;
- (d) “Complaint” means any allegation in writing made by a complainant addressed to the Registrar or President regarding any disqualification incurred by a medical practitioner under section 7;
- (e) “Form” means a Form appended to these rules;
- (f) “Person” shall include any Company or body corporate or association or body of individuals; whether incorporated or not or artificial juridical person;
- (g) “Prescribed Fees” means the fees prescribed by the State Govt. under the Himachal Pradesh Medical Council (Fee) Rules, 2011 or under any other provisions of the Act;
- (h) “section” means a section of the Act; and

(i) “State Government” means the Government of Himachal Pradesh.

(2) All other words and expressions used herein but not defined in these Rules, shall have the meanings respectively as assigned to them in the Act.

PART-II

HEADQUARTER, CORPORATE SEAL APPOINTMENT OF MEMBERS AND CONDUCT OF BUSINESS OF THE COUNCIL

3. Headquarter.—The office of the Council shall situate in Indira Gandhi Medical College and Hospital at Shimla, or at such other place as the Government may fix.

4. Corporate Seal.— (1) The Common seal of the Council shall be kept in a box having two different locks and the key of one lock shall be in the custody of the President and the key of the other lock in the custody of the Registrar.

(2) The seal shall be affixed on each registration certificate which is issued under these rules and on such other documents as the Council, or when, the Council is not sitting the Executive Committee, may direct, but its use by the said Committee shall be limited to such acts as may be necessary to carry into effect the power delegated to it by the Council.

5. Register of members.—A book in Form-I shall be kept, containing the names of the members of the Council, the electorates they represent, the date of appointment of each member, the terms for which he was elected /nominated and the dates of death, resignation or retirement of each member, and such book shall be regularly kept up so as to show the period at which each of the bodies that has power to appoint may proceed to make a new appointment and the same particulars shall be kept with regard to members appointed by the State Government.

6. Calling of meetings.—(1) The Council shall meet, at least twice in a calendar year, on such date, time and place as may be fixed by the President:

Provided that the President-

- (a) may call a special meeting at any time on ten days' clear notice to deal with any urgent business requiring the attention of the Council; and
- (b) shall call a special meeting on fifteen days' notice, if he receives a notice in writing signed by not less than 1/3rd members and stating the purposes of the meeting and the business which Council is required to transact under the provisions of the Act.

(2) At the special meeting called by the President only the business for which the meeting has been called shall be transacted, unless the Council by a resolution to transact any other business.

7. Notice for calling the meeting.—(1) All the members shall be given thirty clear days' notice for ordinary meeting and fifteen days' notice for a special meeting by the Registrar. Every notice shall specify the date, time, place and agenda of the meeting and it shall also be posted at the office of the Council.

(2) A member, who wishes to move any motion for including any business for transaction not included in agenda, shall give notice thereof to the Registrar not less than twenty clear days before the date fixed for the meeting.

(3) The Registrar shall not less than ten clear days before the date fixed for a special meeting, with the notice of meeting issue a complete agenda paper showing the business to be transacted in the said meeting.

(4) A member who wishes to move an amendment to any item included in the agenda, shall give notice to the Registrar not less than three clear days before the date fixed for the meeting.

(5) The Registrar shall, if the time permits cause a list of all the amendments in respect of which notice has been given under sub-rule (5) to be made available for the use of every member:

Provided that the President may, if the Council agrees, allow a notice to be discussed at a meeting, notwithstanding the fact that notice was received too late.

(6) The President and the Registrar shall discuss and decide whether or not, to include such notice/motion in the agenda and where such notice/motion is disallowed, the reason for doing so shall also be communicated to the member sending the notice/motion.

8. Non-admissibility of motion.—(1) A motion shall not be admissible.

(a) if the matter to which it relates is not within the scope of the functions of the Council;

(b) if not raised substantially, the same question as a motion or amendment which has been moved or withdrawn with the leave of the Council within one year of the date of the meeting at which it is designed to be moved:

Provided that such a motion may be admitted at a special meeting of the Council convened for the purpose on the requisition of not less than two-thirds of the members of the Council:

Provided further that nothing in these rules shall prohibit further discussion on any matter referred to the Council by the State Government in exercise of any of its functions under the Act.

(c) unless it is clearly and precisely expressed and raises substantially one definite issue; and

(d) if it contains inferences, ironical expressions or defamatory statements.

(2) The President may disallow any motion which in his opinion is inadmissible under subrule (1):

Provided that if the motion can be rendered admissible by amendment, the President may admit it in an amended form.

(3) When the President disallows or amends a motion, the Registrar shall inform the member who gave notice of the motion, of the order of disallowance, or of the form in which the motion has been admitted, as the case may be.

9. Attendance at the meeting.—At each meeting, an attendance register shall be placed in the meeting room and every member present shall sign against his name in the register.

10. President and the quorum of the meeting.—(1) Every meeting of the Council shall be presided over by the President or if he is absent by the Vice-President or, if both President and Vice-President are absent by a presiding officer to be elected by the members from amongst themselves.

(2) All the references referred to the President shall be read as referring to the person for the time being presiding over the meeting.

(3) Eight members of the Council including the President, present in the meeting shall constitute a quorum.

Provided that in case of a meeting adjourned for want of quorum, no quorum shall be required in the next meeting to be convened on the same issue.

11. Adjournment of meeting for want of quorum.—If, at the time appointed for a meeting a quorum is not present, meeting shall not commence until a quorum is present and if quorum is not present on the expiration of 30 minutes from the time appointed for the meeting or during the course of any meeting, the meeting shall stand adjourned to such future time and date as the President may appoint.

12. Decision by voting.—(1) Every matter to be discussed and decided by the Council in the meeting shall be moved by a member in the shape of a motion and the President shall put it to the Council for voting.

(2) Votes shall be taken by show of hands or by division or by ballot, as the President may direct:

Provided that votes shall be taken by ballot if three or more members so desire and ask for it:

Provided further that if voting has been by show of hands, a division shall be taken if a member asks for it.

(3) The President shall determine the methods of taking votes by division.

(4) The result of the vote shall be announced by the President and shall not be liable to be challenged by any member.

(5) In the event of equality of votes the President shall have a second or a casting vote.

(6) During the meeting, the President may, at any time, make any objection, or suggestion or give information to elucidate any point to help the members in the discussion.

13. Minutes of the Council.—(1) The proceedings of the meetings for the Council shall be preserved by the Registrar on a file, in the form of typed/printed minutes which shall be authenticated, after confirmation, by the President.

(2) Copies of the minutes of each meeting shall be submitted to the President by the Registrar within fifteen days of the meeting and attested by him and a copy each shall cause to be sent to each member within thirty days of the meeting by the Registrar.

(3) The minutes of the meeting shall contain such motions and amendments as have been moved and adopted or negatived with the names of the mover and the seconder, but without any record of observations made by any member at the meeting.

(4) If any objection regarding the correctness of the minutes is received within thirty days of the dispatch of minutes by the Registrar, such objections together with the minutes as recorded and attested shall be put before the next meeting of the Council for confirmation. At this meeting no question shall be raised except as to the correctness of the minutes of the meeting:

Provided that if no objection regarding a decision taken by the Council at a meeting is received within thirty days from the date of dispatch by the Registrar, in relation to the minutes of the particular meeting such decision may, if expedient be put into effect before the confirmation of the minutes at the next meeting:

Provided further that the President may direct that action be taken on a decision of the Council before the expiry of the period of thirty days.

(5) The minutes of the council shall as soon as practicable after their confirmation be made up in sheets and consecutively pagged for insertion in the volume which shall be permanently preserved.

(6) A report shall be kept of the observations and that of the discussions at the meeting of the Council in an accurate manner for the use of the members of the Council. The detailed proceedings of the meeting shall be treated as 'Confidential', and be kept in the office and shall be open to members for inspection. A copy of the proceedings in whole or in part shall be supplied to any member who applies for it. Such copy shall be marked 'Confidential' and be supplied on the payment of a sum fixed by the President which shall not exceed the cost of copying. No copy of proceedings held in camera shall be supplied, but such proceedings can be inspected by the members.

PART-III

POWERS AND DUTIES OF THE PRESIDENT AND VICE-PRESIDENT

14. Powers and duties of the President.—The President shall exercise such powers and perform such duties as are contained in the provisions of the Act, rules and standing orders of the Council. He shall do such acts as he considers necessary in the furtherance of the objects for which the Council is established.

15. Powers and duties of the Vice-President.—If the office of the President is vacant or if the President for any reasons is unable to exercise the powers or perform the duties of his office, the Vice-President shall act in his place and shall exercise the powers and perform the duties of the President.

PART-IV

EXECUTIVE COMMITTEE

16. Constitution of the Executive Committee.— (1) The Executive Committee shall consist of the President ex-officio member and four members elected by the Council in its first meeting from amongst themselves as under:-

- (a) One member to be elected from amongst members nominated under clause (a) of sub-section (3) of section 3 of the Act;
 - (b) One member to be elected from amongst members elected under clause (b) of sub-section (3) of section 3 of the Act;
 - (c) One member to be elected from amongst members elected under clause (c) of sub-section (3) of section 3 of the Act; and
 - (d) One member to be elected from amongst the ex-officio members under clauses (d), (e) and (f) of sub-section (3) of section 3 of the Act.
- (2) The President of the Council shall be the ex-officio Chairman of the Executive Committee.
- (3) The Registrar shall be the Secretary of the Executive Committee.

17. Term of members of Executive Committee and manner of filling up of casual vacancies.—(1) The term of the members of the Executive Committee shall be co-terminus with their membership in the Council.

(2) A casual vacancy in the office of the Chairman or member of the Committee shall be filled up by election:-

Provided that such vacancy in the office of an elected member occurring within six months prior to the date of which the term of the office of all the members is to expire, shall not be filled.

18. Quorum.—Three members of the Executive Committee, including the President shall form a quorum.

19. Functions.—(1) The Executive Committee shall have powers to discharge the functions of the Council within the frame work of the Act and the rules in accordance with the general policy and principles laid down by the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the Executive Committee shall exercise the following powers, duties and functions namely :-

- (a) Superintendence of the publication of the Himachal Pradesh State Medical Registrar, which shall be prepared by the Registrar ;
- (b) drafting of business (other than motions and amendments notified by the members) and submit recommendations thereon ;
- (c) obtaining from medical practitioners such information as may be necessary to facilitate the requirements of the Act;
- (d) consider and prepare report upon any objections that may seem to require the attention of the Council;
- (e) examining and reporting on the petitions presented to the Council and referred to the Executive Committee;
- (f) grant leave to the Registrar under sub-section (2) of section 14 of the Act;

- (g) consider the reports/recommendations made by the Disciplinary Committee constituted under section 21 of the Act;
- (h) consideration the complaints against registered medical practitioner's for breach of the professional conduct and submit its report thereon to the Council; and
- (i) reporting to the Council on all applications for registration which are not covered under the schedule of the Himachal Pradesh Medical Council:-

20. Meetings of the Executive Committee.—(1). The Executive Committee shall meet on such date, time and place as may be fixed by the President. The President may however if he thinks fit, upon a written requisition by not less than three members, call an extraordinary meeting of the Executive Committee on short notice.

- (2) The President and the Registrar shall discuss and decide the agenda of the meeting.

21. Notice of the meeting.—The Registrar shall give to all members of the Executive Committee seven clear days' notice in the case of an ordinary meeting and three clear days' notice in the case of an extraordinary meeting specifying therein the place, date and time of the meeting and also stating whether the meeting is an ordinary meeting or a special meeting and the business to be transacted therein.

22. Attendance at the meeting.—At each meeting an attendance register shall be placed in the meeting room and every member present shall sign against his name in the register.

23. Business to be transacted at the meeting.—(1) Every meeting of the Executive Committee shall be presided over by the President and if he is absent presiding officer of the meeting shall be elected by the members from amongst themselves.

- (2) In the ordinary or extraordinary meeting no business other than that specified in the notice calling such meeting shall be transacted:

Provided that the presiding officer may permit any business to be discussed which is of urgent nature and which was not entered in the notice of the meeting.

- (3) All questions at a meeting of the Executive Committee shall be decided by a majority of the members present and in the event of an equality of votes the presiding officer shall have second or casting vote.

24. Decisions by Circulation.—(1) When the matter is so urgent that its decision cannot await till the holding of the next meeting of the Executive Committee, the same shall be decided by circulating it to all the members of the Executive Committee.

- (2) When the matter is so urgent that even reference to the members of the Executive Committee by circulation shall defeat its object, the President may exercise the powers of the Council:

Provided that in such cases the action taken by the President shall be required to be ratified by the Executive Committee at its next meeting.

25. Participation of a member other than a member of the Executive Committee.—The President may invite a member of the Council, not being a member of the Executive

Committee to attend any meeting of the Executive Committee for any particular item of the agenda. Any member so invited shall be free to participate in the discussion, relating to that item but shall have no right to vote.

26. Minutes of meetings.—(1) A copy of the minutes of each meeting shall be drafted by the Registrar and submitted to the President within ten days from the date on which the meeting was held for his countersignatures after which these shall be sent to each member of the Executive Committee within twenty days from the date on which meeting was held. In case no corrections/suggestions are received from the members within fifteen days from the date of despatch of the minutes of the meeting by the Registrar, the decision recorded therein shall be given effect to.

(2) The minutes shall be sent to the members of the Council after confirmation by the Executive Committee at the next meeting.

Provided that the President, may, if necessary, direct that the action be taken on a decision of the Executive Committee before the expiry of the said period of fifteen days mentioned above.

PART-V

TRAVELLING AND OTHER ALLOWANCES ADMISSIBLE TO MEMBERS OF THE COUNCIL AND THE EXECUTIVE COMMITTEE

27. Travelling and other allowances to members of the Council and the Executive Committee.—(1) For attending the meeting of the Council or the Executive Committee, the official members shall be paid travelling allowance/daily allowances in accordance with the provisions of the rules as are applicable to them.

(2) Non-official members of the Council shall be allowed travelling allowance as admissible to the highest Grade-I Officers of the State Government.

(3) All non-official members of the Council and the Executive Committee shall be entitled to get a fee of Rs. 500/- (rupees five hundred) only per day for attending a meeting of the Council or the Executive Committee which shall be paid in addition to the travelling allowance as admissible to them under sub-rule (2) of this rule.

PART-VI INQUIRIES

PROCEDURE TO BE FOLLOWED IN INQUIRIES

28. Complaints to be addressed to the Registrar.—A complaint by a person or body charging the registered practitioner with an infamous conduct in professional respect shall be made in writing addressed to the Registrar which shall state the grounds of complaint and be accompanied by one or more declarations as to the facts of the case.

29. Contents of declaration.—(1) Every declaration shall state the description and true place of abode of the declarant and where a fact stated in declaration is not with personal knowledge of the declarant, the source of information and grounds for the belief of the declarant and its truth shall be accurately and fully stated.

(2) The declarations which are made in contravention of this rule shall not be accepted as evidence.

30. Suspension of registration of mentally or physically disabled person.—(1) If at any time it is made to appear by an affidavit that a person registered under the Act, has become mentally or physically disabled to the extent that the continued practising of such person is contrary to the public welfare, the Executive Committee may hold inquiry into the facts submitted and may order the suspension of the registered medical practitioner for a specified period from carrying on his profession or practice in medicine.

(2) The registration of a person who seeks retirement from the service on medical grounds shall be temporarily cancelled for a period of three years:

Provided that he/she may be registered again after a period of three years if declared fit for practice by the Council.

31. Guilty conduct person has applied for registration or when registration has already been rejected.—Whenever information is received by the Registrar that a medical practitioner, who is an applicant for registration or whose name has already been rejected for registration, has been guilty of conduct which prima-facie constitutes infamous conduct in professional respect, the Registrar shall make abstract of such information under intimation to the President.

32. Conviction for a cognizable offence.—Whenever information reaches the office of the Council that a registered practitioner has been charged with a cognizable offence or has been under the censure of any judicial or other competent authority in relation to his professional character or has been guilty of conduct which prima-facie constitutes infamous conduct in a professional respect, the Registrar shall make an abstract of information and shall submit the same to the President.

33. Penalty/removals from the register.—Every person registered under the Act who has been found after inquiry by the Executive Committee to have been guilty of improper conduct which when regard is had to such person, profession or calling it improper shall be liable to one of the following penalties:-

- (a) caution or reprimand or a reprimand and caution.
- (b) suspension for a specified period from practising in modern scientific system of medicine or performing acts in relation thereto;
- (c) deletion of his name from the register.

34. Action on the abstract/complaint.—(1) Where a complaint has been lodged, the abstract of the complaint and all other documents having bearing on the case shall be submitted by the Registrar to the President who shall if he thinks fit instruct the Registrar to ask the registered practitioner by means of a registered letter for any explanation which he may wish to offer.

(2) The documents including any explanation forwarded by the charged practitioner to the Registrar, shall then be referred to the Executive Committee which shall consider the same and shall have power to cause further investigation to be made and further evidence to be taken and to take legal advice if necessary.

(3) If the Executive Committee is of the opinion that a prima-facie case is not made out, the matter shall not be proceeded further and the Registrar shall inform the complainant of the resolution of the Executive Committee.

(4) If the Executive Committee is of the opinion that the circumstances suggest for issuing a letter of warning to the charged practitioner, it shall send its findings to the Council, and in either case if the Executive Committee is of the opinion that the case is one in which an inquiry is ought to be held, the President shall direct the Registrar to take steps for the institution of an inquiry and for having the case heard and determined by the Executive Committee.

(5) The decision on complaint against the delinquent registered practitioner shall be taken within a time limit of six months.

35. Notice of Inquiry by the Executive Committee.—(1) Any inquiry to be conducted under subsection (1) of section 22 of the Act shall be initiated by issuing a notice in writing on behalf of the Executive Committee by the Secretary of the Executive Committee addressed to the charged registered practitioner.

(2) The notice issued under sub-rule (1) above shall specify the nature and particulars of the charge and shall inform the charged practitioner of the day on which the Executive Committee intends to deal with his case and shall call upon him to answer the charge in writing and to attend before the Executive Committee on the said day.

(3) The notice shall be in Form-II with such variations as circumstances may require and shall be sent three weeks before the date of inquiry.

36. Supply of documents to charged registered practitioner.—(1) In every case in which the Executive Committee resolves that an inquiry is required to be instituted and a notice for an inquiry is issued accordingly, the complainant if any, and the charged registered practitioner shall for the purpose of his defence or replies, as the case may be, and upon request in writing for that purpose signed by himself be entitled to be supplied by the Registrar with a copy of any declaration, explanation or answer or other document given or sent to the Executive Committee for or on behalf of the other party, which such other party may be entitled on proper proof to use at the hearing or evidence in support of or in answer to the charge specified in the notice of inquiry.

(2) Any answer, evidence or statement forwarded or application made by the charged registered practitioner between the date of issue of the notice and the day fixed for the hearing of the charge shall be dealt with by the Chairman of the Executive Committee in such manner as he himself, or under legal advice, thinks, fit.

(3) All material documents which are to be laid before the Executive Committee as evidence with regard to the case shall be typed and a copy thereof be furnished to each of the parties before hearing of the case.

37. Procedure where complainant appears.—Where the complainant appears personally or through his representative other than a legal practitioner, the following procedure shall be followed:-

- (a) The Registrar as the Secretary of the Executive Committee shall read to the Executive Committee the notice of the inquiry addressed to the charged registered practitioner-
- (b) The complainant shall be invited to state his case by himself or through his representative and to produce his proof in support of the same. At the conclusion of the complainant's proof his case shall be closed.

- (c) The charged registered practitioner shall then be invited to state his case by himself or through his representative and to produce the proof in support of the same. He may speak before the Executive Committee about his case either before or at the conclusion of his proof but only once.
- (d) At the conclusion of the charged registered practitioner's case the Executive Committee shall, if the said charged registered practitioner has produced evidence, hear the complainant in reply on the case generally but shall hear no further evidence except in any special case in which the Executive Committee thinks fit to produce such further evidence. If the charged registered practitioner produces no evidence the complainant shall not be heard in reply, except by special leave of the Executive Committee.
- (e) Where a witness is produced by any party before the Executive Committee he shall be first examined by the party producing him and then cross examined by the opposite party and then re-examined by the party producing him. The Executive Committee reserves to itself the right to decline to admit in evidence any declaration where the declarant is not present or he declines to submit to cross examination.
- (f) The President as the ex-officio Chairman of the Executive Committee and the members of the Executive Committee through him may also put question to any witness or party.

38. Procedure where complainant does not appear.—Where there is no complainant or no complainant appears the following procedure shall be followed:-

(a) The Registrar as the Secretary of the Executive Committee shall read to the Executive Committee the notice of inquiry addressed to the charged registered practitioner and shall state the facts of the case and produce before the said Committee evidence by which the same is supported.

(b) The charged registered practitioner shall then be invited to state his case by himself or through his representative and to produce proof in support of the same. He may speak before the Executive Committee either before or at the conclusion of his proof but only once.

39. Inclusion of deliberations.—Upon the conclusion of the hearing on the case the Executive Committee shall deliberate thereon in private and at the conclusion of the deliberations, the President as the ex-officio Chairman of the Executive Committee shall for the purpose of summing up the deliberations call upon the Executive Committee to vote on the following resolutions to be put from the Chair as may be applicable to the circumstances of the case:-

(1) In the case of charged registered practitioner who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1973 alleged against him:-

“that has proved to have been convicted of cognizable offence as defined in the Code of Criminal Procedure, 1973 as alleged against him in the notice of inquiry.”

(2) In the case of a registered practitioner charged with infamous conduct in a professional respect:-

- (a) “that the Executive Committee do now proceed to decide the charges alleged against in the notice of inquiry and the same have been proved or have not been proved.”

If this resolution is not carried, further hearing of the case shall stand adjourned till the next or some other future meeting of the Executive Committee, as the Executive Committee shall direct, and the hearing thereof shall be taken at such next future meeting as an adjourned case.

If the said resolution is carried, the Executive shall be called upon by the President to vote on the following resolution to be put from the Chair:-

- (b) “that the fact or the following facts (specifying them) all alleged against in the notice of inquiry have been proved to the satisfaction of the Executive Committee.”

If this resolution is carried, the Executive Committee may either proceed to adjudge whether on the facts proved the accused registered practitioner has been guilty of infamous conduct in a professional respect and to direct the Registrar to delete his name from the register or may postpone its judgement and adjourn the case until the next or some other future meeting.

(3) In the case of the charged registered practitioner convicted of a felony (or misdemeanors or crime or offence) or charged with infamous conduct in a professional respect, for the purpose of deciding whether or not the judgement of the Executive Committee of the conviction (or facts) proved shall be postponed and the Executive Committee shall be called upon by the President as the ex-officio Chairman of the Executive Committee to vote on the following resolution to be put from the chair:-

- (c) “that the Executive Committee do now proceed to pronounce its judgement on the conviction (or facts) proved against”

If this resolution is not carried the judgement of the Executive Committee shall stand postponed till its next or some other future meeting as it shall direct and the case shall be taken at such next or other future meeting as a case on which judgement has been postponed.

If this resolution is carried, the Executive Committee shall proceed at once to pronounce its judgement on the case and shall be called upon by the President as the ex-officio Chairman of the Executive Committee to vote on the following resolution to be put from the Chair:-

In the case of a conviction:-

- (d) “that having been proved to have been convicted of the felony (or misdemeanor or crime or offence) alleged against him in the notice of inquiry the Registrar as the Secretary of the Executive Committee be directed to delete his name from the medical practitioner register.”

In the case of practitioner charged with infamous conduct in professional respect:-

- (e) “that the Executive Committee do now adjudge to have been guilty of an infamous conduct in a professional respect and direct the Registrar to delete from the register the name of”

If the resolution (d) or (e) as the case may be is not carried, the President may announce the judgement or the Executive Committee in the following from :-

“that the Executive Committee do not see fit to direct the Registrar to delete from the register the name of Shri

40. Notice of adjourned hearing.—(1) In the event of an adjournment of the hearing or a postponement of judgment to another session, the Executive Committee on the case coming up again for consideration may hear the charged registered practitioner and the complainant (if any) on the day fixed for further consideration and the complainant and the practitioner shall each be requested to furnish to the Registrar in writing any further facts or evidence which they may desire to lay before the Executive Committee.

(2) The notice shall be given so as to allow at least twenty eight days between the day on which the notice is given and the day appointed. No further facts or evidence presented by a party to the inquiry for consideration shall be received or considered by the Executive Committee unless a statement thereof has been previously furnished to the Registrar in compliance with this rule.

41. Hearing.—(1) On the case coming before the Executive Committee for further consideration the Registrar as the Secretary or the Executive Committee shall, if necessary, state the facts and explain the position of the case to the Executive Committee. The charged registered practitioner shall then be invited to speak before the Executive Committee either personally or through his representative of which he may have duly given notice to the Registrar. The complainant (if any) shall also be invited to speak before the Executive Committee either personally or through his representative and lay before the said Committee any further evidence of which he shall have duly given notice.

(2) At the conclusion of the further hearing, the Executive Committee shall deliberate on the case in private and at the conclusion of the deliberation the President as the ex-officio Chairman of the Executive Committee shall call upon the said Committee to vote in an adjourned case on the same resolution as at the original hearing and in case in which judgement was postponed on a resolution under sub-rule (3) (c), (3) (d) of (3) (e) of rule 39, as the case may be.

42. Resolution for removal of name.—(1) If, in the opinion of the Executive Committee the conduct of the charged registered practitioner is found infamous in relation to the medical profession particularly under any code of ethics prescribed by the Council or by the Medical Council of India then by the formal resolution put by the President as ex-officio Chairman of the Executive Committee from the Chair it may recommend to the President for removing the name of the said practitioner from the register as per provisions of section 22 of the Act.

(2) An order by the Executive Committee to remove the name of registered practitioner under the provisions of section 22 shall be subject to the confirmation by the Council and shall take effect from the date of such confirmation.

43. Notice of removal of name.—(1) The Registrar shall upon the removal of any name from the register pursuant to the provisions of section 22 of the Act forthwith send notice of such removal to the registered practitioner and such notice shall be sent by a registered letter addressed to the last known address or to the registered address of the said practitioner. The Registrar shall also send forthwith intimation of any such removal to the Dean or the Secretary or the appropriate officer of the body or bodies from which the said practitioner has received his qualification or qualifications.

(2) A person whose name has been removed from the register under the provisions of these rules shall forthwith surrender his certificate or registration to the Registrar and the name so removed shall be published in the Official Gazette.

44. Intimation to the licensing body.—the Registrar shall within one month after any name has been removed from the register by order of the Council as per the provisions of section 22 of the Act send to the body from which the practitioners have received their qualifications a list of such names and shall call the attention of each licensing body to the following resolution of the Executive Committee:-

“The Executive Committee recommends that no person whose name has once been removed from the register and has not been restored to the said register shall without previous reference to the Council be admitted to the examination for obtaining any new qualification which is registerable under the provisions of the Act.”

PART-VII

RESTORATION OF NAME TO THE REGISTER

45. Power to re-enter the name.The Council, if it thinks fit may, on an application received from registered practitioner whose name has been deleted from the register under section 22 of the Act, direct the Register, to re-enter his name in the register.

46. Application for re-entry of the name.— Any person whose name has been removed from the register by the direction of the Council under section 22 but who still possesses a qualification entitling him to be registered under the Act, may make an application to the Council in Form-III for re-entry of his name in the register and the following procedure shall be followed in the respect of every such an application:-

(1) The application shall be in writing addressed to the Council and signed by the applicant and shall state the grounds on which the application is made.

(2) The application shall be accompanied by-

(a) A declaration made by the applicant setting forth the facts of the case and stating that he is the person originally registered; and

(b) One of the following documents:-

(i) Applicant's diploma.

(ii) His certificate of registration in original if the same has not been already returned by him .

(iii) A certificate in Form-IV from two practitioners registered under the Act as to his identity.

(3) The statement in the application shall also be verified by certificates in writing to be given by two practitioners registered under the Act who are residents in the neighborhood of the place where the applicant has been residing since the removal of his name and they shall testify his present good character.

(4) Before the application is considered by the Council, the Registrar shall notify the same to the licensing bodies whose qualifications were held by the applicant at the time his name was removed from the register and he shall further by the letter addressed to the person or body (if any) on whose complaint the applicant's name was removed, give notice of the application and of the time when the Council intends to consider the same.

(5) The Council shall consider the application and may, if it thinks fit, adjourn the consideration of it to a future date to require further evidence or explanation from the applicant.

(6) The application and the certificate referred in sub-rule (3) shall be in Forms-V and VI respectively with such variations as the circumstances may require. Printed forms shall be kept by the Registrar in his office and he shall supply them to intending applicant.

PART-VIII

APPEALS

47. Appeals.—(1) Every appeal, preferred to the Council under section 24 of the Act shall be addressed to the Registrar and shall be accompanied by a fee as prescribed in the Himachal Pradesh Medical Council (Fee) Rules, 2011 .

(2) Every appeal shall be deemed to have been duly presented if the same is sent by registered post, or has been delivered personally or through an agent authorised in writing by the appellant, in the office of the Council.

(3) Every appeal shall be accompanied by a certified copy of the order appealed against and shall contain the following particulars:-

(a) The order against which the appeal is preferred.

(b) The grounds of appeal briefly but clearly set out.

(4) Every appeal shall be signed by the applicant and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of grounds of appeal.

48. Procedure for hearing of appeals.—(1) If the appeal is not preferred in the manner laid down in rule 47 or is not accompanied by the prescribed fee it shall be summarily rejected.

(2) If the appeal is admitted, the Council shall decide the same after giving the appellant and where the appeal is against the order of the Register passed in relation to any person other than the appellant, after giving such person an opportunity of being heard. Every decision of the Council shall be communicated to the Registrar who shall giving effect to the same.

PART-IX

MAINTENANCE OF ACCOUNTS AND FUNDS OF THE COUNCIL

49. Management of property.—The Registrar shall be responsible for the maintenance of all properties of the Council, and shall maintain a stock register of the movable property of the Council.

50. Deposit of Council's money in the Bank.—The Council shall open an account in the State Bank of India and all money received by it under sub-section (1) of section 13 of the Act shall be deposited in the Bank subject to the provision of rule 51.

51. Receipt of money on behalf of the Council.—All money payable to the Council shall be received on behalf of the Council by the Registrar or any other employee of the Council authorised by him in writing in this behalf and shall be deposited in the Bank on the day following that on which these are received. A receipt in the form as prescribed in Form-VII shall be granted by the Registrar in lieu of having received the money.

52. Operation of account of the Council.—The account of the Council shall be operated jointly by the Registrar and the President (and in the absence of the President these shall be operated by the Registrar and the Vice President).

53. Permanent advance.—The Registrar shall retain a permanent advance of five thousand rupees.

54. Maintenance of accounts.—All money received or spent on behalf of the Council shall without any reservation be brought to the account of Council in the general cash book to be maintained in the form prescribed in Form-VIII under the direct supervision of the Registrar, and in his absence under the supervision of an employee of the Council authorized by him in writing.

55. Audit of accounts.—(1) The accounts of the Council shall be examined annually by the Examiner, Local Fund Accounts of the Finance Department of the State Government.

(2) The details of the audit shall be communicated to the Council by the Examiner, Local Fund Accounts, Finance Department, Himachal Pradesh Government; and after the Executive Committee has considered the same, the audit report and the audited statement of accounts shall be forwarded to the Department of Health and Family welfare, Copies of the audit report shall at the same time circulated to all the members of the Council, for information.

56. Preparation of annual statement of accounts.—The Registrar shall in the month of July each year cause to be prepared a statement of income and expenditure of preceding financial year ending 31st March, and draw the attention of the Council to such matters which appears to him necessary for being brought to the notice of the Council.

57. Preparation of estimates.—(1) The Registrar shall, in the month of October each year or on such date as the President may fix, cause to be prepared an estimate of income and expenditure of the Council for the year commencing on the 1st of April of the ensuing year and shall submit the same to the Council.

(2) In estimates provisions shall be made for the fulfillment of liabilities of the Council and for effectually carrying out the provisions of the Act.

(3) The Council shall consider the estimates submitted to it under sub-rule (1) and may sanction the same with or without any alterations as it may deem fit.

58. Preparation of supplementary estimates.—The Council may, at any time, during the year for which any estimates have been sanctioned cause supplementary estimates to be prepared and submitted to it. Every such supplementary estimates shall be considered by the Council in the same manner as if it were original annual estimates. No expenditure shall be incurred which is not duly provided in the estimates sanctioned under sub-rule (3) of rule 57 or in a supplementary estimates.

59. Payment of Bills.—All the salary bills of the staff and other vouchers presented as a claim for money shall be received and examined by the Accountant of the Council. On being satisfied that the claim is in order, the bill shall be passed- (a) by the Registrar, if the claim relates to a salary bill of the staff or is for an amount not exceeding one thousand rupees and (b) by the President in other cases.

60. Refund.—Amounts received by the Council on account of fees shall not be refunded under any circumstances. The amounts thus received shall remain credited to the account of the Council.

Provided that any amount paid by a practitioner in excess of prescribed fees shall be credited to the suspense account of the Council and may be refunded if claimed within a period of three years and if no claim for refund is made within the aforesaid period the amount shall be credited to the account of the Council:

61. Interpretation of rules.—In case of any interpretation or clarification of these rules the decision of the State Government shall be final.

62. Administrative Report.—The Council shall publish the annual administrative report and also shall send to the Government for approval.

FORM-I
(See rule 5)

Book/ Registrar showing the particulars of Members of the Council

Name	Address	Whether nominated or elected (electorate which he represents)	Tenure	Date of commencement of tenure	Date of which the tenure is to expire in the ordinary course	If the appointment is terminated before the due date mentioned in column (6) then the date and reason of earlier termination	Remarks
1	2	3	4	5	6	7	8

FORM-II
(See rule 35)

Notice to the charged registered practitioner to attend proceedings regarding inquiry under section 22 of the Himachal Pradesh Medical Council Act, 2003

Sir,

On behalf of the Executive Committee of the Himachal Pradesh Medical Council, I give you notice that complaint and evidence has been laid before the Executive by which the complainant makes the following charges against your namely:-

1.
2.

It is informed that you are required to be examined under section 22 of the Act and I am directed to give you notice that on the day _____ of _____ 20_____, a meeting of the Executive Committee will be held at at O'clock in the to consider the above mentioned charges against you and decide whether or not they should direct that your name be removed from the register, pursuant to section 22 of the Himachal Pradesh Medical Council Act, 2003 (Act No. 16 of 2006). You are requested to answer in writing the above charges and attend before the Executives Committee mentioned place and time to establish any denial or defence that you may have to make and you are hereby informed that if you do not attend as requested, the Executive Committee may proceed to hear and decide the said charges in your absence.

Any Answer or other communication or application which you may desire to make in respect of the charge or your defence thereto must be addressed to the undersigned and transmitted so as to reach him not less than days before the day appointed for the hearing of the said case.

Registrar.

FORM-III
(See rule 46)

APPLICATION FOR RE-ENTRY OF NAME REMOVED UNDER SECTION 22 IN THE REGISTER OF MEDICAL PRACTITIONERS

To

The Himachal Pradesh Medical Council,
.....
.....

Sir,

I, the undersigned (a) holding the qualifications (b).....do hereby solemnly declare the following:-

In the year (c) my name was duly registered in the register in respect of the following qualification viz, (d) and on the date of deletion of my name I was registered in respect of the following additional qualification viz (e)

The Registrar removed my name from the register on (f) ----- for default in payment of renewal fee.

Since the Registrar removed of my name from the register, I have been residing at (g) and my occupation has been (h)

It is my request that my name may be restored in the register as (i)

Yours faithfully,

Signature.

Name and Address

.....
Registration No.

Note:-

- (a) Insert full name, (b) Insert qualification, (c) Insert date of registration (d) Insert qualifications, (e) Insert additional qualifications, (f) Insert date of removal (g) give particulars, (h) Insert particulars as to professional occupation (i) a registered medical practitioner.-

FORM-IV

[See rule 46 (2) (b) (iii)]

CERTIFICATE IN SUPPORT OF APPLICATION

It is certified that _____ whose name formerly stood in the register of medical practitioners under the Himachal Pradesh Medical Council Act, 2003 (Act No. 16 of 2003) is well known to me and he bears a good moral character.

Name : _____
(name of person certifying)

Address: _____

Qualification: _____

Date: _____

Signature of the person certifying

Registration No. _____

FORM-V
[See rule 46 (6)]

**STATUTORY DECLARATION BY APPLICANT FOR RESTORATION OF NAME TO
 THE REGISTER OF MEDICAL PRACTITIONERS UNDER SECTION 22 OF THE ACT**

To

The Himachal Pradesh Medical Council,

- (1) I, the undersigned (a) now holding the qualifications of (b) do solemnly declare that the following are the facts of my case on the basis of which I seek re-entry of my name in the register of Medical practitioners.
- (2) On (c) my name was duly registered in the register in respect of the following qualifications namely, on (d) i.e. the date of inquiry I was registered in respect of the same qualifications (e) and also in respect of the following additional qualifications, namely:-
- (3) At an inquiry held on the (f) day of the Council directed my name to be removed from the register on a complaint made to the Himachal Pradesh Medical Council by (g) of Charging me of (h)
- (4) Since the removal of my name from the register I have been residing at (i) and my occupation has been
- (5) It is my intention that my name may be re-entered in the register (i)
- (6) The grounds of application are (k)

Signed.

Declared at on before me.

Magistrate or Notary Public

Note: (a) Insert full name (b) Insert qualifications, if any (c) Insert date, (d) Insert date of inquiry, (e) mention the qualifications (g) Insert name and address of the complainant, (h) Insert charge on which name was removed, (i) Insert the address (j) Insert particulars as to professional occupation (k) All facts and grounds on which the application is made should be clearly and concisely stated.

FORM-VI
[See rule 46 (6)]

**CERTIFICATE REGARDING VERIFICATION OF CONTENTS OF PARAGRAPHS (4)
AND (5) OF APPLICATION IN FORM-V**

I certify as follows:-

(i) My registration No. is

(ii) I have read paragraphs (4) and (5) of the application of and say that I have been and am well acquainted with the said both before and since his name had been removed from the register I believe him to be a person of good character and the statements made by me are to be the best of my knowledge, information and belief, true.

Signature.

FORM-VII
[See rule 51]

RECEIPT

See rule 51 of the Himachal Pradesh Medical Council, (General) Rules, 2011 and rule 3 (3) of the Himachal Pradesh Medical Council (Fee) Rules, 2011,	See rule 22 of the Himachal Pradesh Medical Council, (General) Rules, 2011 and rule 3 (3) of the Himachal Pradesh Medical Council (Fee) Rules, 2011.
HIMACHAL PRADESH MEDICAL COUNCIL	HIMACHAL PRADESH MEDICAL COUNCIL
Book No.	Book No.
Serial No..... Dated _____	Serial No..... Dated _____
Received from Sh/Smt the sum of Rs. (rupees) on account of in cash/through pay order. Registrar	Received from Sh/Smt the sum of Rs. (rupees) on account of in cash/through pay order. Registrar

FORM-VIII
[See rule 54]

HIMACHAL PRADESH STATE MEDICAL COUNCIL GENERAL CASH BOOK

Month and date	Folio number of classified abstract	Departmental major/minor and detailed head and sub-head of account	Particulars receipt and names of persons from whom received	Number of bank receipt and date
1	2	3	4	5

Amount	Daily Total	Remittance to Bank No. date of Bank receipt	Amount	Month
6	7	8	9	10

Date	Folio Number of Classified abstract	Departmental major/minor subheads and detailed sub-heads of account	Particulars of charge and name of payee	Number of voucher
11	12	13	14	15

Number and date of cheque	Amount	Daily total
16	17	18

By order,
Sd/-
Secretary (Health).

TOURISM & CIVIL AVIATION DEPARTMENT

NOTIFICATION

Shimla-2, 3rd April, 2012

No. TSM-B(6)-2/97-I.—The Governor, Himachal Pradesh is pleased to order the re-designation/upgradation of five posts of District Tourism Development Officers of this Department at Shimla, Solan, Mandi, Manali and Dharamshala carrying the Pay Band of Rs. 10300-34800/- + Grade Pay of Rs. 5000/- as Deputy Director in the Pay Band of Rs. 15600-39100 + Grade Pay of Rs. 6600/-.

This issues with the prior concurrence of the Finance Department vide their U.O.No.52024950/11-Fin-E dated 17.02.2012.

By order,
MANISHA NANDA,
Pr. Secretary(Tourism & CA).

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla-171001, 31st March, 2012

No. HHC/Admn. 3 (359)/92.—6 days commuted leave on and with effect from 6.03.2012 to 11.03.2011 is hereby sanctioned ex post facto in favour of Shri M.R Rolta, Court Master of this Registry.

Certified that Shri M.R.Rolta has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri M.R Rolta would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla-171001, 31st March, 2012

No. HHC/Admn. 3 (133)/79-I.—7 days commuted leave on and with effect from 16.03.2012 to 22.03.2011 is hereby sanctioned ex post facto in favour of Shri Ajeet Singh Himalvi Additional Registrar of this Registry.

Certified that Shri Ajeet Singh Himalvi has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Ajeet Singh Himalvi would have continued to officiate the same post of Additional Registrar but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001

NOTIFICATION

Shimla, the 30th March, 2012

No. HHC/GAZ/14-314/2010.—Hon'ble the Chief Justice has been pleased to grant 24 days' earned leave w.e.f. 2.4.2012 to 25.4.2012 with permission to prefix Sunday falling on 1.4.2012 in favour of Shri Sunish Aggarwal, Civil Judge (Junior Division)-cum-JMIC (I), Dharamshala, District Kangra, H.P.

Certified that Shri Sunish Aggarwal is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Sunish Aggarwal would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC (I), Dharamshala, but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001**NOTIFICATION***Shimla, 31st March, 2012*

No. HHC/Admn. 28 (45)94.—In continuation of this Registry Notification No. HHC/Admn.28(45)96-17452-67, dated 23/24.9.1999, the Hon'ble High Court of Himachal Pradesh has been pleased to order that the District and Sessions Judge, Kinnaur at Rampur Bushahr shall hold circuit court at Reckong Peo which shall commence from Monday following Second Saturday and he shall hold sitting during the whole week, from the month of April, 2012.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171001**NOTIFICATION***Shimla, the 30th March, 2012*

No. HHC/Rules/14-61/90.—Hon'ble the Chief Justice, High Court of Himachal Pradesh in exercise of the powers conferred under Article 229 of the Constitution of India and all other enabling powers in this behalf, is pleased to make the following amendment in "**The Himachal Pradesh High Court Officers and Members of the Staff (Recruitment, Conditions of Service, Conduct & Appeal) Rules, 2003**":

1. **Short title.**—These Rules shall be called "**The Himachal Pradesh High Court Officers and the Members of the Staff (Recruitment, Conditions of Service, Conduct & Appeal) (20th amendment) Rules, 2011.**"

2. **Commencement.**—They shall come into force with immediate effect.

3. **Amendment.**—Schedule annexed to "**The Himachal Pradesh High Court Officers and the Members of Staff (Recruitment, Conditions of Service, Conduct & Appeal) Rules, 2003**" shall be substituted by the following:

Sr. No	Name of the post	No. of post	Mode of appointment	Qualification	Desirable	Scale of pay (revised)
4	Peons/ Chowkidars/ Frash/ Chowkidar -cum-Cook.	81	a) 40% posts to be filled up by selection from the Part Time Class-IV employees working in the Registry having four years service as such failing which by direct recruitment. Recruitment to the five Part-Time Class-IV	Matricula - tion for all categories	For Chowkidarcum- cook, three years xperience is desirable in a Government undertaking or a reputed hotel.	Rs.4900- 10680 + grade pay Rs. 1300.

			<p>employees shall be by direct recruitment.</p> <p>b) Whenever a new Chief Justice/Judge is appointed in the High Court, one Peon shall be appointed as per his choice, to be attached with him.</p> <p>c) 30% by absorption from amongst the peons of choice appointed. Provided that such a person satisfies all the following conditions:-</p> <p>(i) Must have rendered at least four years continuous service as a peon of choice.</p> <p>(ii) The Chief Justice or the Judge, as the case may be with whom such peon has worked/has been working on coterminus basis, has recorded his full satisfaction about the performance, character, and potential for future service of such person.</p> <p>(iii) Must not have crossed the age of 48 years.</p> <p>(iv) In the event of peon of choice provided with the Chief Justice/Judge(s) being regularized against an available vacancy in the quota, one peon shall be appointed as per his choice to be attached with him.</p> <p>Explanation: If a person has been</p>			
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			<p>appointed peon on co-terminus basis with a particular Chief Justice/Judge but could not complete four years of continuous service with him because of such Chief Justice/Judge demitting office owing to his transfer/retirement or for any other reason and if such person, has started working with another Chief Justice/Judge as a peon of choice on coterminus basis, the period spent by him earlier with the outgoing Chief Justice/Judge shall be counted towards the computation of four years and accordingly, he shall also be considered for appointment in the said category subject to the fulfillment of all eligibility criteria.</p> <p>However, if no peon of choice has ever been regularized in the case of a Chief Justice/ Judge and in case the Chief Justice or Judge is transferred or demits office, such peon of choice attached to the Chief Justice or the Judge, shall be regularized in service without insisting for completion of four years service.</p> <p>d) 10% from the Clerks of the Advocates in the H.P. High Court/ Employees of the H.P. High Court Bar</p>		<p>Five years as Clerk of an Advocate/ employee of the H.P. High Court Bar Association.</p>	
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			<p>Association.</p> <p>e)10% from the Physically Disabled Persons.</p> <p>f)10% on compassionate ground.</p> <p>Note: The seniority of Peons of choice when regularly appointed shall be determined from the date of their initial appointment as peons of Choice.</p>			
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**BY ORDER OF HON'BLE THE
CHIEF JUSTICE**

**(C.B. Barowalia),
Registrar(Subordinate Judiciary and Judicial).**

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001

NOTIFICATION

Shimla, the 30th March, 2012

No. HHC/Admn. 6 (23)/74-XIV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of H.P. Financial Rules, 2009, has been pleased to declare the Civil Judge (Senior Division)-cum-Chief Judicial Magistrate, Kangra at Dharamshala as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Junior Division)-cum-JMIC (1), Dharamshala and also the Controlling Officer for the purpose of T.A. etc. in respect of class- II, III and IV establishments attached to the aforesaid Court under head "2014-Administration of Justice" w.e.f. 2.4.2012 to 25.4.2012 with permission to prefix Sunday falling on 1.4.2012 or until he returns from leave.

By order,
Sd/-
Registrar General.

**IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).**

Ref No. 38 of 2007

Instituted on. 21.4.2007.

Decided on 4.1.2012

1. Pushpinder Kumar S/o Shri Ram Lal R/o Village Chaha, P.O Masul, Khana, Tehsil Kasauli, District Solan, H. P.
2. Ashok Kumar S/o Shri Des Raj R/o Village Naryal P.O Taksal, Tehsil Kasauli, District Solan, H. P.
3. Ranjeet Singh S/o Shri Gopal Singh R/o Village Dubla P.O Patta Masul Khana, Tehsil Kasauli, District Solan, H. P.
4. Bandana Sharma D/o Shri Ram Lal C/o Shri Diwan Chand, House No. 1100, Talab Mohalla Kalka.
5. Mukesh Kumar S/o Shri Diwan Chand C/o Hiten Canteen, Plot No.19-C, Sector-2, Parwanoo, District Solan, H. P. Petitioners.

Vs.

The Managing Director, M/s Ansysco, Plot No. 19-F, Sector-2, Parwanoo, District Solan,
H. P. Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Dushyant Dadwal, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of (1) Shri Pushpinder Kumar S/o Shri Ram Lal (2) Ashok Kumar S/o Shri Des Raj (3) Ranjeet Singh S/o Shri Gopal Singh (4) Bandana Sharma D/o Shri Ram Lal (5) Mukesh Kumar S/o Shri Diwan Chand workmen by The Managing Director, M/s Ansysco, Plot No. 19-F, Sector-2, Parwanoo, District Solan, H.P. w.e.f. 15.7.2005 without complying the provisions of Industrial Disputes Act, 1947, whereas junior to them are retained by the employer as alleged by the workmen is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workmen are entitled to?”

2. Petitioners S/Shri Pushpinder Kumar, Ashok Kumar and Mukesh Kumar have filed separate claim petitions whereas petitioners Km. Bandana Sharma and Ranjeet Singh did not appear before this court despite valid service and failed to file any claim petition.

It is pleaded by S/Shri Pushpinder Kumar and Ashok Kumar that they were engaged as trainee operator by the respondent company during the period 17.3.2003 to 17.3.2004. The petitioners, thereafter, on completion of training period were kept as operators and worked till

14.7.2005. Petitioner Mukesh Kumar was engaged as operator with effect from 1.4.2002. Mukesh Kumar was kept as trainee with effect from 1.2.2003 to 1.8.2003 and thereafter worked as an operator till 14.7.2005.

The petitioners have completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. The services of the petitioners were terminated on 15.7.2005 on their refusal to work through a contractor. It is also alleged that while dispensing with the services of the petitioners, the principle of last come first go was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, it is stated that the petitioners were appointed as trainees for fixed term. The performance of the petitioners was not satisfactory and on their request training period was extended. The petitioners have not been issued any appointment letter and were not workmen. The petitioners were also paid their dues, compensation and one month's notice in advance. On refusal of petitioners to accept letters, the amount was sent through registered post.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the termination of the petitioners are bad for want of mandatory provisions of Industrial Disputes Act, 1947? If so, its effect? . . . OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioners are entitled to? . . . OPP
3. Whether the present petition is not maintainable in the present form? . . . OPR
4. Relief.
5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1 No.

Issue No.2 Becomes redundant.

Issue No.3 Yes

Relief. Reference answered in negative per operative part of award.

Reasons for findings

Issue No. 1 :

6. The petitioners S/Shri Ashok Kumar and Pushpinder Kumar were offered traineeship on 17.7.2003 vide Ex. RW-1 and they were to be paid stipend of Rs. 2,000/- per month. Petitioner Shri Mukesh Kumar was offered traineeship on 1.2.2003 for six months vide Ex. RW-1/A and he was to be paid stipend of Rs. 1800/- per month. They were informed that after the expiry of training, their engagement will depend upon the requirement of work and performance over the last twelve months. The training period of the petitioners was extended as mentioned.

7. It is clear from the contents of letters Ex. RW-1 and Ex. RW-2 that the petitioners S/Shri Pushpinder Kumar and Ashok Kumar were offered traineeship for twelve months and petitioner Mukesh Kumar for six months. The period of training was extended for further one year

as their performance during the training period was not satisfactory per Ex. RW-2 and Ex. RW-1/B. They were to be paid stipend of Rs.1800/-and Rs. 2000/- per month. They were to be informed after the expiry of training period whether they could be offered employment or not. It was dependent on their progress during the period of training and availability of a suitable vacancy. The traineeship did not entitle them to claim employment with the respondent company. They were also informed by the respondent company about the completion of training per Ex. RW-3. Reliance is placed on decision reported in H.L.J 2009 (1) 155 titled as Vijay Kumar Versus Presiding Judge, Labour Court and Another wherein it has been held that:

“A Trainee is a learner other than a probationer who is selected for training in any job or trade, whether paid or unpaid, for such period extending upto three years with no guarantee of future permanent employment. The trainee cannot be termed as a workman.”

8. It is, thus, evident that the petitioners could not be termed as a workman. Their period of training could be extended upto three years. They were never offered employment after the completion of training as noticed above. The respondent company was neither required to issue any notice nor any compensation was to be paid to them. The notice and compensation is only required to be paid to a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. There is no separate order of confirming them issued by the respondent company and as such the petitioners always remained as trainee and have never attained the status of workman.

The petitioners otherwise were also served notice and paid retrenchment compensation. The petitioners as such cannot canvass that their termination is illegal, null and void. Since the petitioners Km. Bandana Sharma and Ranjeet Singh have not filed their claim, therefore, their termination is also not illegal and void. The issue is answered against the petitioners.

Issue No. 2 :

12. In view of the findings on issue no.1, this issue become redundant.

Issue No. 3 :

13. The petitioners as held on findings on issue no.1 are not entitled to any relief. The petitions filed by them, as such, is not maintainable. This issue is answered against the petitioners.

Relief

In the result, the reference is answered in negative. Consequently, petitioners are not entitled to any relief as prayed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 4th day of Jan., 2012.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref.39/2011

Sh Bhag Ram V/s M/s Marico Ltd Ledhimajra, Solan.

6.3.2011:-

Present:- Sh Rahul Mahajan, Advocate for the respondent No.1.

Sh Ram Chander, Advocate for the respondent No. 2.

The parties have entered into a settlement in this case on 13.10.2011. Pursuant to the settlement, the workers have received full and final payments from respondent no.2 in satisfaction of their claim and left the job. The copies of full and final satisfaction receipts alongwith resignations are placed on record. The reference stands answered in terms of the settlement. Let a copy of this award be sent to the appropriate government for publication in official gazette. File after completion, be consigned to records.

Announced. 6th March, 2012.

Sd/-
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H. P).

Ref No 41 of 2008.

Instituted on. 1.8.2008.

Decided on 11.1.2012.

Ramesh Kumar S/o Shri Raghunath R/o Village Shalyan, P.O Tiyaali, Tehsil Theog, District
Shimla, H. P. . .Petitioner.

Vs.

1. The Managing Director, H.P Forest Corporation Limited, Shimla, H. P.
 2. The Divisional Manager, HP State Forest Corporation, Ltd. Shimla, H.P.
- .. Respondents.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Advocate.**For respondent :** Shri Peeyush, Advocate.**AWARD**

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Ramesh Kumar S/o Shri Raghunath by (1) The Managing Director, H.P Forest Corporation Limited, Shimla, H.P. (2) The Divisional Manager, HP State Forest Corporation, Ltd. Shimla, H.P, w.e.f. 14.10.1999

without conducting any proper enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?"

2. It is pleaded that the petitioner was engaged as daily wages Chowkidar by the respondent in the year 1992. The petitioner was serving at Banga Pani Depot. in District Shimla . The petitioner was under treatment for severe abdominal pain from 20.6.1999 to 22.6.1999 and reported for duties on 23.6.1999 when he came to know that on the intervening night of 22/23.6.1999, a theft had taken place at Depot. The respondent conducted preliminary enquiry in which the petitioner was associated and thereafter, some plain papers were got signed from the petitioner. On 12.7.1999 one show cause notice was issued and another show cause notice was issued on 17.6.1999. The respondent without considering the replies of the petitioner, terminated his services without holding domestic enquiry and following the procedure. The petitioner challenged the order before the Ld. State Administrative Tribunal which was dismissed for want of jurisdiction.

3. The claim is opposed by the respondent on legal objections regarding locus standi, maintainability and estoppel. On merits, it is stated that the petitioner was not a workman. A theft of sixty scants of "Deodar" was reported from the Bangapani Depot. on the intervening night of 22nd and 23rd June, 1999. The theft took place due to willful absence of the petitioner. The enquiry was initiated and the petitioner was found to be negligent in performance of his duties and his services were terminated. The story of illness was concocted one.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition. On the pleadings of the parties, following issues were framed:-

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 14.10.1999 without conducting any proper domestic enquiry and without complying the provisions of Industrial Disputes Act, 1947 is illegal and improper as alleged?
.. OPP
2. If issue no.1 is proved, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to?
.. OPP
3. Whether the petition is not maintainable as alleged?
.. OPR
4. Whether the petitioner has no locus standi to file and maintain the petition? .. OPR
5. Whether the petitioner is estopped from filing the petition by his own acts, deed and conduct as alleged?
.. OPR
6. Whether the petition is time barred?
.. OPR
7. Relief.

5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Entitled for reinstatement with seniority and continuity in service but without back wages.
Issue No.3	No.
Issue No.4	No
Issue No.5	No
Issue No.6	No
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1 :

6. It is settled that where the termination is by way of penalty, services of workman can be terminated only after holding domestic enquiry on establishment of misconduct. Reliance is placed on decision reported in (1998) 9 SCC-468 in case titled as MCD Vs. Praveen Kumar Jain and others, wherein it was held that:

“We have heard learned counsel for the appellant as well as learned counsel for respondent 1. In our view, an impossible situation has been created for the appellant. Learned counsel for the appellant was right when he contended that in the statement of respondent no.1 recorded in the preliminary enquiry he had clearly admitted that he had typed only seven names of persons eligible for being regularized and the additional two names of Mahender Kumar and himself were not typed by him. This showed that Mahender Kumar got these two names inserted and if the benefit of the name of respondent no.1 was to accrue on account of such interpolation, on broad probabilities respondent no.1 could be said to have colluded with Mahender Kumar and got his name inserted through his agency at least and therefore for such misconduct he was required to be suitably dealt with. Unfortunately, for the appellant the impugned order of termination extracted above does not show that it was passed after a departmental enquiry wherein the disciplinary authority was satisfied about the said misconduct. On the contrary, it seeks to terminate the services of respondent no.1 by way of simple discharge and not by way of any penalty. It is only during the proceedings before the Labour Court that a different stand was taken that it was by way of penalty. This stand was obviously taken by the appellant because the order of simpliciter termination would have remained stillborn as section 25-F of the Industrial Disputes Act was admittedly not complied with by the appellant. With this difficulty staring in the face, a stand was taken that if it was by way of penalty. If it was by way of penalty then at least a regular departmental enquiry had to be conducted. It was also required to be followed by the enquiry officer's report resulting in adverse finding against respondent no.1 and its acceptance by the disciplinary authority. Nothing of this sort was done. There is neither the enquiry officer's report holding respondent no.1 guilty of charge which in fact was never framed against him nor if there any acceptance of such a finding of the enquiry officer by the disciplinary authority. In fact the disciplinary authority has never held respondent no.1 guilty of any charge of misconduct. It is also interesting to note that while challenging the award of the Labour Court in writ petition the appellant clearly stated in para no.3 of the writ petition that since respondent no.1 and Shri Mahender Kumar were merely on casual engagement/muster roll employees and were not regular employees of the petitioner-corporation or that of DDA, they were not entitled to a departmental enquiry has his required for the regular employees of the petitioner-corporation. As such a stand was taken, it is obvious that the termination order based on misconduct is not the result of any departmental enquiry against respondent no.1. Consequently, the impugned order of termination would fail even on that ground. If it is a simpliciter discharge order it is violative of section 25-F of Industrial Disputes Act and if it is a penalty order, as contended

by the appellant, it would fail on merit as not having followed the producer of departmental enquiry. In either view of the matter, the impugned order must be held to be rightly set aside by the Labour court and the said decision was also rightly confirmed by the High Court.

7. Once the ratio of the said decision is applied to this case, it is evident that on finding that theft of sixty two scants of deodar took place from Road Side Depot., Bangapani and the petitioner was found absconding, it was incumbent upon the respondent to appoint enquiry officer to go into the truthfulness of the charges but the respondent has failed to do so.

8. Importantly, there is preliminary enquiry report dated 23.6.1999 conducted by Divisional Manager. The Divisional Manager had found that sixty two scants of deodar were stolen from Road Side Depot., Bangapani. S/Shri Krishan Lal, Chowkidar and "Pujari" were questioned. Shri Krishan Lal Chowkidar had stated that he was fast sleep. "Pujari" was away. The petitioner was found absconding. S/Shri Molak Raj and Rakesh Kumar were also questioned. On the strength of said preliminary enquiry, show cause notice about willful absence for the period 20.6.1999 to 22.6.1999 dated 12.7.1999 per copy Ex. R-1/A was issued to the petitioner that as to why disciplinary action including termination be not ordered for misconduct. The petitioner in the reply stated that he was suffering from severe pain and fever and he (petitioner) had requested co-chowkidar to convey the message to the Forest Guard and Block Officer.

9. The Divisional Manager after considering the reply of the petitioner issued show cause notice dated 17.8.1999 per copy Ex. R-1/B as to why the services of the petitioner be not terminated. The petitioner in his reply Ex. PW-1/C dated 31.8.1999 to the show cause notice had submitted that he was ill and he had also enclosed medical certificate in support of his illness. So, whether the absence of the petitioner on 20.6.1999 to 22.6.1999 was caused for the reasons beyond his control or was wilfull could have been established by appointing enquiry officer to examine the allegations whether the medical certificate filed by the petitioner was genuine or not or he was forced by the circumstance to leave the place of duties. The respondent however, did not conduct any enquiry to find the genuineness of the reasons for absence of the petitioner and proceeded to terminate the services of the petitioner after issuance of notice dated 14.10.1999. The failure of the respondent to conduct domestic enquiry against the petitioner makes it clear that the petitioner has not been afforded opportunity of being heard and there is violation of the principles of natural justice. The order by way of penalty is illegal. The role is not attributed to the petitioner that he had in any manner connived in the commission of theft of sixty two scants of deodar. Deodar scants were stolen at a time when the petitioner was not at the place. Shri Krishan Lal Chowkidar was at the depot. Therefore, it is clear that there was Chowkidar on watch and ward duty. The imposition of penalty of termination of services of the petitioner, in such circumstances, was also disproportionate to the misconduct. The order terminating the services of the petitioner is also bad.

10. Section 25-F of the Act envisaged issuance of notice of month's notice before termination. On referring to notice Ex. R-1/C, it is apparent that it is dated 14.10.1999 whereas the endorsement on this notice bears date 18.10.1999. Notice was served after expiry of four days of its issue nor retrenchment compensation was paid with the notice for the service rendered for the period 1992 to 1999 and as such cannot be held to be 30 days notice, therefore, the notice is vitiated and is quashed. The issue is answered in favour of the petitioner.

Issue No. 2:

11. The findings on issue no.1 make it clear that the termination of the services of the petitioner is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages for the period for which he remained out of work. In case reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals

Vs. Prabhakant Shukla, the Hon'ble Apex Court has observed that "full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry". This issue is partly answered in favour of the petitioner.

Issue No. 3 :

12. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Issue No. 4 :

13. The termination of the services of the petitioner as held on findings on issue no.1 above is illegal. The petitioner is entitled to reinstatement with seniority and continuity. The petition as such is maintainable. This issue is answered against the respondent.

Issue No. 5 :

14. The respondent has not brought any evidence to substantiate this issue. This issue is answered against the respondent.

Issue No. 6 :

15. It could not be explained by the respondent as to why the claim of the petitioner is time barred. In case reported in (1999) 6 SCC 82, *Ajayab Singh Vs. Sirhind Co-operative Marketing – cum- processing Service Society Limited and Anothe*, Apex Court has observed that:

"The provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Industrial Disputes Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone."

16. In view of law laid down by Apex Court, the claim of the petitioner is not time barred. The issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to reinstatement in service alongwith seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 11th day of Jan., 2012.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H. P).

Ref No. 60 of 2004.

Instituted on. 22.3.2004.

Decided on 21.1.2012.

Yadvinder Sharma S/o Shri Rama Nand Sharma R/o Village Banjui, P. O. Sadraghat, Tehsil Kandaghat, District Solan, H. P. . .Petitioner.

Vs.

The Executive Engineer, I&PH Division, Solan, District Solan, H. P. . . Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Advocate.

For respondent : Shri Jagdish Kanwar, DY. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Yadvinder Sharma s/o Shri Rama Nand Sharma daily wages workman by the Executive engineer, I&PH Division, Solan, H.P w.e.f. 1.9.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

1. It is averred that the petitioner was engaged as a daily wager by the respondent on 1.8.1998. The petitioner has completed 240 days in a calendar year for the application of section 25-F Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with without complying with the provisions of Industrial Disputes Act. It is also alleged that while dispensing with the services of the petitioner, the principle of last come first go was also not followed.

2. The claim is opposed by the respondent on legal objection regarding maintainability. On merits, it is stated that the petitioner has worked upto August, 2000 on daily wages. The petitioner left the job on his own. The dispute was not covered under the provisions of Industrial Disputes Act.

3. The reference was dismissed in default by this Court on 29.6.2005. the petitioner filed writ petition against the aforesaid order before the Hon’ble High Court and the order dated 29.6.2005 was set aside and the reference was remitted to this Court for decision.

4. On the pleadings of the parties, following issues were framed:-

1. Whether the termination of services of the petitioner by the respondent with effect from 1.9.2000 is in violation fo the provisions of Industrial Disputes Act, 1947?

. . OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? .OPP.
3. Relief.
5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1 Yes.

Issue No. 2 Entitled for reinstatement with effect from 3.1.2011 but without back wages.

Relief. Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1 :

6. It is apperant from the statement of petitioner Shri Yadvinder Sharma (PW-1), Shri Mandeep Gupta (RW-1), posted as Asistant Engineer, IPH Division Kandaghat and mandays chart Ex. R-2 that the petitioner had completed 240 days of service preceding his termination, that is, between 1.9.1999 to 31.8.2000 when according to him, the services were terminated. Thus, he was entitled for the protection of section 25-F of the Act. However, since he was not served with one month's notice, the retrenchment is bad in the eyes of law entitling him to relief.

7. The plea of abandonment of job by the petitioner is not established. There is no iota of evidence on record which could go to show that the petitioner left the job on his own as no notice or letter regarding the abandonment of the job by the petitioner is placed on record by the respondent. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

8. The respondent has not violated the principles of last come first go. S/shri Baldev Singh, Joginder Singh and Sita am were engaged on 1.10.1992, 1.3.1998 and 1.8.1998 per extract of muster rolls Ex. R-3 to Ex. R-5 and were senior to the petitioner and were engaged after court orders per extract Ex. R-6 to Ex. R-8. Thus, there is no violation of provisions of sections 25-G and 25-H Industrial Disputes Act, 1947.

9. Thus, it is evident that the petitioner had completed continuous service of 240 days preceding his termination. The termination of the services of the petitioner by the respondent, in such circumstances, is violation of the provisions of section 25-F Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2 :

10. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service. The reference was dismissed in default on 29.6.2005 and the petitioner filed Civil Writ Petition no. 683 of 2011 against the order before the Hon'ble High Court in the year 2011. The Hon'ble High Court per order dated 28th February, 2011 while disposing of the reference in para 10 has made an observation about moulding of relief in following terms :

“We make it clear that in the event of the Labour Court answering the reference in favour of the petitioner, while moulding the relief, the petitioner shall not be entitled to any benefit during the period between 19.7.2004 and 2.1.2011 in view of the delay and laches attributable to the petitioner.

11. The aforesaid order passed by the Hon'ble High Court makes it clear that the petitioner is not entitled to any benefit for the period 19.7.2004 and 2.1.2011. Since, the services of the petitioner have been terminated illegally without following the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947, the petitioner is entitled to reinstatement in service with effect from 3.1.2011 but without back wages. This issue is partly answered in favour of the petitioner.

Relief

In the result, the reference is partly answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with effect from 3.1.2011 but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 21st day of January, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 60 of 2007
Instituted on. 2007.
Decided on 5.1.2012.

Rajinder Sharma S/o late Shri Sehdev Sharma R/o Village and P.O Sholi, Tehsil Nankhari, District, Shimla, H.P. ..Petitioner.

Vs.

The Managing Director, Woodville Palace Resorts (P) Ltd., Woodville Palace, Raj Bhawan Road, Shimla-2 ..Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri Rakesh Manta, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the employee Shri Rajinder Sharma S/o late Shri Sehdev Sharma is a workman or not and termination of his services by the Managing Director, Woodville Palace Resorts (P) Limited, Woodville Palace, Raj Bhawan Road, Shimla-2 w.e.f. 01.01.2004 without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. It is averred that the petitioner was engaged as Front Office Manager by the respondent in the year, 1995 in his Hotel known as Woodville Palace on a salary of Rs. 3,000/- per month. The petitioner was promoted as Assistant Manager in the year, 2001 and was drawing Rs. 8,000/- per month + Rs. 2,000/- over time. The entire supervisory functions, affairs and management of the Hotel were being discharged by the respondent. The petitioner was only to obey the command of the employer. The services of the petitioner were terminated on 1.1.2004 without complying with the provisions of the Industrial Disputes Act, 1947. The petitioner was not paid salary for the period July, 2003 to December, 2003. The petitioner was also not paid gratuity and medical expenses/miscellaneous expenditure etc. The petitioner was entitled to payment of salary to the tune of Rs. 4,32,000/-, over time allowances to the tune of Rs. 1,08,000/-, gratuity to the tune of Rs. 96,000/- and medical expenses/miscellaneous expenditure to the tune of Rs. 90,000/- that is a total sum of Rs. 7,26,000/- alongwith interest @ of Rs. 18% per annum.

3. The claim is opposed by the respondent on legal objections regarding maintainability and status of the petitioner as workman. On merits, it is stated that the petitioner was not workman and was working as Assistant General Manager drawing salary of Rs. 7,000/- per month with facility of free food, beverages and other perks. The petitioner was mainly performing the supervisory, managerial and administrative functions. The petitioner had been misappropriating the funds, that is, forging of kitchen order tickets, bills, cash and purchase. On acquiring knowledge of misappropriation, the respondent intended to lodge FIR. The services of the petition lodge FIR against him.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether Shri Rajinder Sharma is a workman? ..OPP.
2. If issue no.1 is proved, whether the termination of services of petitioner by the M.D Woodville Palace Resorts (P) Limited, Shimla-2 w.e.f. 1.1.2004 without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified as alleged? ..OPR.
3. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1 No.

Issue No.2 Become redundant.

Relief. Reference answered in negative per operative part of award.

Reasons for findings

Issue No.1.

7. “Workman” in section 2(s) is defined as follows:

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

8. The Apex Court in case reported in 1971 *Lab. IC 699 (vol.4, C.N. 166)* in case titled as *The Burmah Shell Management Staff Association Vs. The Burmah Shell Management Staff Association and others* has observed as follows: -

“The next aspect that has to be taken notice is of that, in practice, quite large number of employees are employed in industries to do work of more than one of the kinds mentioned in the definition. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work, or technical work, or clerical work, there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. He may be doing manual work as well as supervisory work, or he may be doing clerical work as well as supervisory work. He may be doing technical work as well as clerical work. He may be doing technical as well as supervisory work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of “workman” under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work.”

9. In case reported in 2006-III LLJ (767) titled as *Anand regional Co.op. Oil Seedsgrowers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah* it was observed by the Hon’ble Supreme Court that:

“For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations”

“Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of section alone and that too it being a small one and relating to quality control would not answer the test.”

10. The question, as such, whether a person is employed in a supervisory capacity or on clerical work, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.

11. In the instant case, the petitioner was holding the post of Assistant General Manager. Per RW-1 Shri Vijay Sharma, General Manager and RW-2 Shri Sant Ram Bhardwaj, Accounts Manager, the petitioner was certainly performing supervisory and managerial duties and used to look-after all the departments that is house-keeping, kitchen, general repair and maintenance in the Hotel. The petitioner was also responsible to sanction/grant leave to the workers and staff working under him. Per RW-3 Shri Man Singh, Chef, the work of kitchen was under supervision and control of the petitioner. The petitioner used to give directions to the staff of the Hotel and he (RW-3) Man Singh used to tell about the requirements of provisions to petitioner and the petitioner used to order for the same. On the directions of the petitioner about nature, food was being prepared. The nature of duties of the petitioner was such that he was performing supervisory and managerial duties. Reliance is placed on decision reported in 1985-1 CLR 318 in case titled as Vinayak Baburao Shinde Vs. S.R Shinde in which it was held that:

“The word “Supervise” means to oversee, that is to look after the work done by other persons. The word “Supervision” occurring in section 2(s) of the Industrial Disputes Act means supervision in relation to work or in relation to persons. The essence of supervision consists in overseeing by one person over the work of others. This also involves a power in the person overseeing to direct and control the work done by the persons over whom he is supervising. In an industrial establishment normally there are three layers of work. One is the clerical or the manual work which is done by the workman: the second is the supervisory work done by a supervisor; and at a higher level is the work of a manager.”

13. The petitioner had also authority to confirm the booking per letters Ex. RC and Ex. RD and give discounts per bill Ex. RF dated 22.1.1997. There is nothing on record to make out that the petitioner issued these bills under the directions of the respondent or Shri Vijay Sharma, General Manager (RW-1) of the respondent Hotel. The duties were supervisory and managerial. The testimony of the petitioner that he was obeying the command of the employer without specifying the nature of duties cannot be construed to hold that he was not discharging any supervisory and managerial duties and that he was not a workman. The non production of record of wages does not in any manner abrogate the case of the respondent. Ex. RE is the list of

employees of the respondent Hotel for the months of September to December, 1998 wherein the payment made to the employees of the respondent including petitioner has been reflected. This fact rather substantiates the case of the respondent that the petitioner was working as Assistant General Manager with the respondent. Thus, it is clear that the petitioner was performing supervisory, managerial and administrative functions in the respondent Hotel and was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947. The issue is answered against the petitioner.

Issue No. 2:

14. The findings recorded on issue no.1 is that the petitioner is not a workman, therefore, this issue become redundant.

Relief.

In the result, the reference is answered in negative and as such the petitioner is not entitled to any relief as claimed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 5th day of Jan., 2012.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

—————
IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P).

Ref No. 60 of 2009.
Instituted on. 17.8.2009.
Decided on 7.1.2012.

Rama Devi W/o late Shri Kishan Lal R/o Village Awani, P.O Chaner, Tehsil Theog District Shimla, H.P. ..Petitioner.

Vs.

The Executive Engineer, Electrical Division no. II HPPWD Shimla ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Parkash Chand, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Smt. Rama Devi W/o late Shri Kishan Lal by the Executive Engineer, Electric Division No.II HPPWD Shimla -3 w.e.f. 30.9.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the above worker is entitled to?”

2. It is pleaded that the petitioner was engaged as beldar by the respondent on 10.3.1999. The petitioner worked from 10.3.1999 to 20.4.1999 at HP PWD Sub Division IGMCM Shimla and from 1.5.1999 to 30.5.1999 with HP PWD Sub Division Reckong Peo. The petitioner, thereafter, worked with effect from 1.7.1999 to 24.2.2001 with fictional breaks with HP PWD Electric Sub Division, Theog. The services of the petitioner were terminated with effect from 30.9.2001 vide notice dated 29.8.2001. The petitioner was reinstated by the order of the Ld. Administrative Tribunal. However, the services of the petitioner were dispensed with with effect from 30.9.2001 without complying the provisions of the Industrial Disputes Act, 1947.

3. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, it is stated that the petitioner had worked during the period on 89 days basis. The services of the petitioner were terminated vide notice dated 28.8.2001 with effect from 30.9.2001. A hand receipt amounting to Rs. 1479/- was prepared on account of compensation and the petitioner did not turn up to receive the amount of compensation.

4. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner have been terminated illegally and in an unjustified manner without complying with the provisions of Industrial Disputes Act, 1947 as alleged? ..OPP.
2. If issue no.1 is proved to what service benefits, the petitioner is entitled to? ..OPP.
3. Relief.

5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for reinstatement with seniority and continuity in service but without back wages.

Relief. Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No.1:

6. It is apparent from the mandays chart Ex. PA, testimony of petitioner (PW-1) and Ex. RD, copy of order dated 16.7.2001, that the petitioner had completed 240 days prior to her termination on 24.9.2001. The petitioner was reinstated pursuant to order dated 16.7.2001 which makes it clear that the petitioner continued in service from 24.2.2001 to 30.9.2001. Thus, the petitioner was entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

7. Notice Ex. RB dated 29.8.2001 makes it clear that the services of the petitioner were ordered to be terminated from 30.9.2001 and there is also reference in this notice that the petitioner may collect the compensation amount from the office during the month. The notice was served on the petitioner on 30.8.2001 per receipt Ex. RC. The notice was not accompanied with the amount of retrenchment compensation as envisaged in section 25-F of the Industrial Disputes Act, 1947. The petitioner had worked for 227, 231 and 124 days during the year 1999 to 2001 and was entitled to retrenchment compensation of 15 days wages for every completed year in view of provisions contained in section 25-B and 25-F of the Act. The amount of compensation payable to the

petitioner comes to Rs. 2294/-. The petitioner was not paid the aforesaid amount of compensation by the respondent with the retrenchment notice as the amount of retrenchment compensation as reflected in hand written receipt Ex. RE is Rs. 1479/-. Therefore, it is evident that the respondent did not pay retrenchment compensation to the petitioner as required under the provisions of section 25-F of the Act. The respondent, in such a situation, cannot also canvas that the petitioner did not collect the amount from the office. Thus, the notice terminating the services of the petitioner is not valid and is hereby quashed. The issue is answered in favour of the petitioner.

Issue No. 2:

8. The findings on issue no.1 make it clear that the termination of the services of the petitioner is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages for the period for which she remained out of work. **In case reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals Vs. Prabhakant Shukla, the Hon'ble Apex Court has observed that "full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"**. This issue is partly answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 7th day of Jan., 2012.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref. 71/2005

Sh Ram Lok V/s M.D.Ganesh Floor Mills, Baddi.

13.1. 2012:

Present:- Sh J. C. Bhardwaj ,AR for the petitioner.

Sh.Kulbhushan Gupta, Advocate with Shri Pankaj Goel, Partner. authorized signatory for respondent.

The Parties have entered into a settlement in this case and pursuant to the settlement the respondent is to pay Rs.25,000/-(Rs.Twenty Five Thousand only.) as compensation to the petitioner within fifteen days. The amount of compensation so paid is in full and final settlement of the claim of the petitioner per statements. The reference stands answered in terms of the settlement and the

award is enforceable forthwith. Let a copy of this award be sent to the appropriate government for publication in official gazette. File after completion, be consigned to records.

Announced.
13th Jan 2012.

Sd/-
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P)

Ref No. 66 of 2009.
Instituted on. 17.08.2009.
Decided on .25.02.2012

Sh. Adha Singh S/o Sh. Mungi Ram, Village Punan, P.O. & Sub Tehsil Nankhari, Distt. Shimla, H.P. ..Petitioner.

Vs.

The Executive Engineer, I & PH Division Rampur Bushahr, Distt. Shimla, H.P. ..Respondent.

Reference Under Section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri Bhagwan Chand, Advocate.

For respondent :- Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of the service of Sh. Adha Singh S/o Sh. Mungi Ram, by The Executive Engineer, IPH, Division Rampur Bushahr, Distt. Shimla w.e.f. year 29.6.2000 without following the provisions of Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of service benefits including reinstatement & compensation the above workman is entitled to?”

1. It is averred that the petitioner was engaged as daily waged beldar on 10th October, 1996 in Sub Division Nankhari by the respondent. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). However, the services of the petitioner were dispensed with without complying with the provisions of the Act. It is also alleged that while dispensing with the services of the petitioner, “the principle of last come first go” was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability and limitation. On merits, it is stated that the petitioner was engaged as daily waged beldar in June, 1996 and worked intermittently till June, 2000. The petitioner never worked for 240 days in any calendar year. The petitioner abandoned the job on his own in June, 2000. Prem Chand was engaged as work inspector in the year 1998 against different category.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?
..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?
..OPP.
3. Whether this petition is barred by limitation?
..OPR
4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement with seniority and continuity in service but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No.1:

5. It is apparent from the mandays chart Ex.RA that in fact the petitioner was engaged in June, 1996 and not in October, 1996. He was retrenched on 29.06.2000. He had completed only 169 days, 172 days, 147 days, 193 days and 114 days in the years, 1996, 1997, 1998, 1999 and 2000 per mandays chart. The petitioner had not completed 240 days of service in a calendar year to seek the protection of section 25-F of the Act.

6. The respondent has not followed the principle of last come first go. S/Shri Chet Ram, Vijay and Ms. Seema who were junior to the petitioner are still working with the respondent. Shri Dila Ram, Clerk, in the office of XEN, IPH, Rampur Division testified that S/Shri Chet Ram, Vijay and Ms. Seema were engaged in the year 1996, 1997 and 1997 respectively, that is, after the engagement of the petitioner., There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana.**

7. The plea of abandonment of job by the petitioner is not established. The testimony of RW-2 Shri Chhangu Ram, Assistant Engineer that the petitioner abandoned the job is not fortified by any notice or letter regarding the abandonment of job by the petitioner. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR

1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

8. Thus, it is evident that juniors to petitioner S/Shri Chet Ram, Vijay and Ms. Seema are still working with the respondent and as such the termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2:

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3.

10. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th February, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P).

Ref No. 62 of 2009
Instituted on. 17.08.2009.
Decided on .25.02.2012

Sh. Prem Chand S/o Sh. Pashu Ram, Village Punan, P.O. & Sub Tehsil Nankhari, Distt. Shimla, H.P. .. Petitioner.

Vs.

The Executive Engineer, I & PH Division Rampur Bushahr, Distt. Shimla, H.P. .. Respondent.

Reference Under Section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri Bhagwan Chand, Advocate.

For respondent :- Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of the service of Sh. Prem Chand S/o Sh. Pashu Ram, by The Executive Engineer, IPH, Division Rampur Bushahr, Distt. Shimla w.e.f. year 29.6.2000 without following the provisions of Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of service benefits including reinstatement & compensation the above workman is entitled to?”

1. It is averred that the petitioner was engaged as daily waged beldar on 10th October, 1996 in Sub Division Nankhari with the respondent. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). However, the services of the petitioner were dispensed with without complying with the provisions of the Act. It is also alleged that while dispensing with the services of the petitioner “the principle of last come first go” was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability and limitation. On merits, it is stated that the petitioner was engaged as daily waged beldar in September, 1996 and worked intermittently till June, 2000. The petitioner never worked for 240 days in any calendar year. The petitioner abandoned the job on his own in June, 2000. Prem Chand was engaged as work inspector in the year 1998 against different category.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? ..OPP.
3. Whether this petition is barred by limitation? ..OPR.
4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement with seniority and continuity in service but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No.1:

5. It is apparent from the mandays chart Ex.RA that in fact the petitioner was engaged in September, 1996 and not in October, 1996. He was retrenched on 29.06.2000. He had completed only 87 days, 158 days, 144 days, 203 days and 122 days in the years, 1996, 1997, 1998, 1999 and 2000 as per mandays chart. The petitioner had not completed 240 days of service in a calendar year to seek the protection of section 25-F of the Act.

6. The respondent has not followed the principle of last come first go. S/Shri Chet Ram and Ms. Seema who were junior to the petitioner are still working with the respondent. Shri Dila Ram, Clerk, in the office of XEN, IPH, Rampur Division testified that S/Shri Dila Ram and Ms. Seema were engaged on 16.10.1996 in the year 1997 respectively that is, after the engagement of the petitioner., There is violation of provisions of sections 25- G and 25-H of the Act which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana.**

7. The plea of abandonment of job by the petitioner is not established. The testimony of RW-2 Shri Chhangu Ram, Assistant Engineer that the petitioner abandoned the job is not fortified by any notice or letter regarding the abandonment of job by the petitioner. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

8. Thus, it is evident that juniors to petitioner S/Shri Chet Ram and Ms. Seema are still working with the respondent and as such the termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2:

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3.

10. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th February, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P).

Ref No. 63 of 2009.
Instituted on. 17.08.2009.
Decided on .25.02.2012

Sh. Ram Sen S/o Sh. Muglu Ram, Village Banoga, Sub Tehsil Nankhari, Distt. Shimla, H.P.
..Petitioner.

Vs.

The Executive Engineer, I & PH Division Rampur Bushahr, Distt. Shimla, H.P.
..Respondent.

Reference Under Section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri Bhagwan Chand, Advocate.

For respondent :- Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of the service of Sh. Ram Sen S/o Sh. Muglu Ram, by The Executive Engineer, IPH, Division Rampur Bushahr, Distt. Shimla w.e.f. year 29.6.2000 while workers junior to him have been retained, is proper and justified ? If not, what relief of service benefits including reinstatement & compensation the above workman is entitled to?”

1. It is averred that the petitioner was engaged as daily waged beldar on 10th October, 1996 in Sub Division Nankhari by the respondent. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). However, the services of the petitioner were dispensed with without complying with the provisions of the Act. It is also alleged that while dispensing with the services of the petitioner, “the principle of last come first go” was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability and limitation. On merits, it is stated that the petitioner was engaged as daily waged beldar in June, 1996 and worked intermittently till June, 2000. The petitioner never worked for 240 days in any calendar year. The petitioner abandoned the job on his own in May, 2000. Prem Chand was engaged as work inspector in the year 1998 against different category.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? ..OPP.
3. Whether this petition is barred by limitation? ..OPR....
4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement with seniority and continuity in service but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No.1:

5. It is apparent from the mandays chart Ex.RA that in fact the petitioner was engaged in June, 1996 and not in October, 1996. He was retrenched on 29.06.2000. He had completed only 118 days, 230 days, 133 days, 176 days and 115 days in the years, 1996, 1997, 1998, 1999 and 2000 per mandays chart. The petitioner had not completed 240 days of service in a calendar year to seek the protection of section 25-F of the Act.

6. The respondent has not followed the principle of last come first go. S/Shri Chet Ram, Vijay and Ms. Seema who were junior to the petitioner are still working with the respondent. Shri Dila Ram, Clerk, in the office of XEN, IPH, Rampur Division testified that S/Shri Chet Ram, Vijay and Ms. Seema were engaged in the years 1996, 1997 and 1997 respectively that is, after the engagement of the petitioner., There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana.**

7. The plea of abandonment of job by the petitioner is not established. The testimony of RW-2 Shri Chhangu Ram, Assistant Engineer that the petitioner abandoned the job is not fortified by any notice or letter regarding the abandonment of job by the petitioner. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

8. Thus, it is evident that juniors to petitioner S/Shri Chet Ram, Vijay and Ms. Seema are still working with the respondent and as such the termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2:

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3:

10. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th February, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P)

Ref No. 65 of 2009.
Instituted on. 17.08.2009.
Decided on .25.02.2012

Sh. Sant Ram S/o Sh. Kharu Ram, Village Lateri, P.O. & Sub Tehsil Nankhari, Distt. Shimla, H.P. ..Petitioner.

Vs.

The Executive Engineer, I & PH Division Rampur Bushahr, Distt. Shimla, H.P. ..Respondent.

Reference Under Section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri Bhagwan Chand, Advocate.

For respondent :- Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of the service of Sh. Sant Ram S/o Sh. Kharu Ram, by The Executive Engineer, IPH, Division Rampur Bushahr, Distt. Shimla w.e.f. year 29.6.2000 while workers junior to him have been kept, is proper and justified ? If not, what relief of service benefits including reinstatement & compensation the above workman is entitled to?”

1. It is averred that the petitioner was engaged as daily waged beldar on April, 1996 in Sub Division Nankhari by the respondent. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). However, the services of the petitioner were dispensed with without complying with the provisions of the Act. It is also alleged that while dispensing with the services of the petitioner, “the principle of last come first go” was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability and limitation. On merits, it is stated that the petitioner was engaged as daily waged beldar in May, 1996 and worked intermittently till June, 2000. The petitioner never worked for 240 days in any calendar year. The petitioner abandoned the job on his own in June, 2000. Prem Chand was engaged as work inspector in the year 1998 against different category.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? ..OPP.
3. Whether this petition is barred by limitation? ..OPR.
4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for reinstatement with seniority and continuity in service but without back wages.

Issue No. 3 No.

Relief. Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1:

5. It is apparent from the mandays chart Ex.RA that in fact the petitioner was engaged in May, 1996 and not in October, 1996. He was retrenched on 29.06.2000. He had completed only 169 days, 237.5 days, 118 days, 191 days and 119 days in the years, 1996, 1997, 1998, 1999 and 2000 per mandays chart. The petitioner had not completed 240 days of service in a calendar year to seek the protection of section 25-F of the Act.

6. The respondent has not followed the principle of last come first go. S/Shri Chet Ram, Vijay Singh and Ms. Seema who were junior to the petitioner are still working with the respondent. Shri Dila Ram, Clerk, in the office of XEN, IPH, Rampur Division testified that S/Shri Chet Ram, Vijay Singh and Ms. Seema were engaged in the year 1996, 1997 and 1997 respectively that is, after the engagement of the petitioner., There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana.**

7. The plea of abandonment of job by the petitioner is not established. The testimony of RW-2 Shri Chhangu Ram, Assistant Engineer that the petitioner abandoned the job is not fortified by any notice or letter regarding the abandonment of job by the petitioner. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an

inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

8. Thus, it is evident that juniors to petitioner S/Shri Chet Ram, Vijay Singh and Ms. Seema are still working with the respondent and as such the termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2:

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No.3.

10. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th February, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P.)

Ref No. 67of 2009.
Instituted on. 17.08.2009.
Decided on .25.02.2012

Sh. Jawahar Lal S/o Sh. Banu Ram, Village Dena, Sub Tehsil Nankhari, Distt. Shimla, H.P.
..Petitioner.

Vs.

The Executive Engineer, I & PH Division Rampur Bushahr, Distt. Shimla, H.P.

..Respondent.

Reference Under Section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri Bhagwan Chand, Advocate.**For respondent :-** Shri Jagdish Kanwar, Dy. DA.**AWARD**

The following reference has been received from appropriate government for adjudication:

“Whether termination of the service of Sh. Jawahar Lal S/o Sh. Banu Ram, by The Executive Engineer, IPH, Division Rampur Bushahr, Distt. Shimla w.e.f. year 29.6.2000 without following the provisions of Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of service benefits including reinstatement & compensation the above workman is entitled to?”

1. It is averred that the petitioner was engaged as daily waged beldar on 10th October, 1996 in Sub Division Nankhari by the respondent. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). However, the services of the petitioner were dispensed with without complying with the provisions of the Act. It is also alleged that while dispensing with the services of the petitioner, “the principle of last come first go” was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability and limitation. On merits, it is stated that the petitioner was engaged as daily waged beldar in November, 1996 and worked intermittently till June, 2000. The petitioner never worked for 240 days in any calendar year. The petitioner abandoned the job on his own in June, 2000. Prem Chand was engaged as work inspector in the year 1998 against different category.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?
..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?
..OPP.
3. Whether this petition is barred by limitation?
..OPR.
4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for reinstatement with seniority and continuity in service but without back wages.

Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No .1:

5. It is apparent from the mandays chart Ex.RA that in fact the petitioner was engaged in November, 1996 and not in October, 1996. He was retrenched on 29.06.2000. He had completed only 60 days, 202 days 46 days, 138 days and 127 days in the years, 1996, 1997, 1998, 1999 and 2000 per mandays chart. The petitioner had not completed 240 days of service in a calendar year to seek the protection of section 25-F of the Act.

6. The respondent has not followed the principle of last come first go. Shri Vijay Singh and Ms. Seema who were junior to the petitioner are still working with the respondent. Shri Dila Ram, Clerk, in the office of XEN, IPH, Rampur Division testified that Sh. Vijay Singh and Ms. Seema were engaged in the year 1997 that is, after the engagement of the petitioner., There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana.**

7. The plea of abandonment of job by the petitioner is not established. The testimony of RW-2 Shri Chhangu Ram, Assistant Engineer that the petitioner abandoned the job is not fortified by any notice or letter regarding the abandonment of job by the petitioner. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

8. Thus, it is evident that juniors to petitioner Shri Vijay Singh and Ms. Seema are still working with the respondent and as such the termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2:

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3:

10. The petitioner as held on findings on issue No.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th February, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

—————
IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P).

Ref No. 80 of 2010.
Instituted on. 16.06.2010.
Decided on .25.02.2012

Sh. Hardyal Singh S/o Sh. Makhu Ram, Village Banoga, Sub Tehsil Nankhari, Distt. Shimla, H.P. Petitioner.

Vs.

The Executive Engineer, I & PH Division Rampur Bushahr, Distt. Shimla, H.P. ..Respondent.

Reference Under Section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri Bhagwan Chand, Advocate.

For respondent :- Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of the service of Sh. Hardyal Singh S/o Sh. Makhu Ram, by The Executive Engineer, IPH, Division Rampur Bushahr, Distt. Shimla w.e.f. year 2000 without following the provisions of Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of service benefits including reinstatement & compensation the above workman is entitled to?”

1. It is averred that the petitioner was engaged as daily waged beldar on April, 1996 in Sub Division Nankhari by the respondent. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). However, the services of the petitioner were dispensed with without complying with the provisions of the Act. It is also alleged that while dispensing with the services of the petitioner, "the principle of last come first go" was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability and limitation. On merits, it is stated that the petitioner worked intermittently from April, 1996 till June, 2000. The petitioner never worked for 240 days in any calendar year. The petitioner abandoned the job on his own in June, 2000. Prem Chand was engaged as work inspector in the year 1998 against different category.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner were terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? ..OPP.
3. Whether this petition is barred by limitation? ..OPR.
4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement with seniority and continuity in service but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1:

5. It is apparent from the mandays chart Ex.RA that in fact the petitioner was engaged in April, 1996. He was retrenched on 29.06.2000. He had completed only 220 days, 172 days, 77 days, 193 days and 110 days in the years, 1996, 1997, 1998, 1999 and 2000 per mandays chart. The petitioner had not completed 240 days of service in a calendar year to seek the protection of section 25-F of the Act.

6. The respondent has not followed the principle of last come first go. S/Shri Chet Ram, Vijay and Ms. Seema who were junior to the petitioner are still working with the respondent. Shri Dila Ram, Clerk, in the office of XEN, IPH, Rampur Division testified that S/Shri Chet Ram, Vijay and Ms. Seema were engaged on in the years 1996, 1997 and 1997 respectively that is, after the engagement of the petitioner. There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana**.

7. The plea of abandonment of job by the petitioner is not established. The testimony of RW-2 Shri Chhangu Ram, Assistant Engineer that the petitioner abandoned the job is not fortified by any notice or letter regarding the abandonment of job by the petitioner. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

8. Thus, it is evident that juniors to petitioner S/Shri Chet Ram, Vijay and Ms. Seema are still working with the respondent and as such the termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2:

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3.

10. The petitioner as held on findings on issue No. 1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th February, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, SHIMLA, (H.P)

Ref No. 48 of 2010.
Instituted on. 22.4.2010.
Decided on 21.1.2012.

Gopal Chand S/o Shri J.R Sharma R/o Village Dhanda, P.O touto, Tehsil and District Shimla, H.P. .. Petitioner.

Vs.

The Managing Director, HRTC Shimla-1. . .. Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri Rajkumar, Advocate.

For respondent : Ms. Rita Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Gopal Chand S/o Shri J.R Sharma by the Managing director, HRTC Shimla-1 w.e.f. 30.3.2001 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of service benefits including reinstatement, compensation and seniority, the above workman is entitled to?”

2. It is pleaded that the petitioner was engaged as a coal boy by the respondent during the period 16.11.1994 to 23.6.2000 with fictional breaks. The petitioner was then engaged as a part time peon on a fixed salary of Rs. 2,000/- per mensem from 23.6.2000 for 89 days with duty hours from 10.00 AM to 5.00PM. The petitioner continued without break from 29.12.2000 to 28.3.2001. The petitioner completed 240 days in a calendar year for the application of section 25-F Industrial Disputes Act, 1947. On 21.3.2001, the petitioner suffered an accident and was under treatment at Indira Gandhi Medical College, Shimla with effect from 21.3.2001 to 31.3.2001 and was under bed rest with effect from 21.3.2001 to 23.6.2001. The respondent instead of granting medical leave, terminated the services of the petitioner without complying with the provisions of Industrial Disputes Act. It is also alleged that the OA filed by the petitioner before the Ld. Administrative Tribunal was withdrawn with liberty to present before competent Court.

3. The claim is opposed by the respondent on legal objections regarding maintainability and laches. On merits, it is stated that the petitioner was engaged as a coal boy on part time basis with effect from 16.11.1994 for 30 days. Thereafter, the petitioner was allowed to continue during winter season every year till 23.6.2000. The petitioner was not engaged as part time peon. The petitioner did not complete 240 days. The retrenchment of the petitioner was not illegal.

4. On the pleadings of the parties, following issues were framed:-

1. Whether the termination of the services of the petitioner is illegal and unjustified for being in contravention of the Industrial disputes Act, 1947, as alleged?

..OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the petition is not maintainable as alleged? ..OPR.
4. Relief.
5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.
 Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages.
 Issue No. 3 No.
 Relief. Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1:

6. It is made out from the testimonies of the petitioner as PW-1 and Virender Gautam, RW-1 that the petitioner had completed 240 days in preceding twelve months before his termination, that is, from June, 2000 to march, 2001. The testimony of Shri Virender Gautam (RW-1) makes it evident that the petitioner was engaged for 89 days basis with effect from 23.6.2000 and then he was again reengaged from 28.9.2000 to December, 2000 and further was reengaged from 29.12.2000 to March, 2001 for 89 days basis. Thus, it is evident from Ex. PW-2/B copy of detail of working days of the petitioner that he had completed more than 240 days during preceding twelve months. In such circumstances, inference cannot be arrived at that the appointment of the petitioner was contractual. Even if, there was contractual appointment for 89 days followed by reengagement, it is evident that fictional breaks given after 89 days to the petitioner amounts to unfair labour practice. Incase reported in (2006) 9 SCC 434 titled as *Haryana State Electronics Development Corporation Limited V. Mamni*, the Hon'ble Supreme Court has held that:

“The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bona fide. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice”.

Thus, it is clear that the petitioner had completed 240 days in twelve months preceding his termination and as such he was entitled to the protection of section 25-F of the Act. The petitioner was not served with one month's notice and was not paid compensation, therefore, the order dated 28.3.2001 terminating the services of the petitioner is illegal, null and void and is hereby set aside and quashed. This issue is answered in favour of the petitioner.

Issue No. 2:

12. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3:

13. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 21st day of Jan., 2012.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-
LABOUR COURT, SHIMLA, (H.P.)

Ref No. 64 of 2009.
Instituted on. 17.08.2009.
Decided on .25.02.2012

Sh. Chuni Lal S/o Sh. Amar Dass, Village Thana, P.O. & Sub Tehsil Nankhari, Distt. Shimla, H.P. ..Petitioner.

Vs.

The Executive Engineer, I & PH Division Rampur Bushahr, Distt. Shimla, H.P. ..Respondent.

Reference Under Section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri Bhagwan Chand, Advocate.

For respondent :- Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of the service of Sh. Chuni Lal S/o Sh. Amar Dass, by The Executive Engineer, IPH, Division Rampur Bushahr, Distt. Shimla w.e.f. year 29.6.2000 while workers junior to him have been kept, is proper and justified ? If not, what relief of service benefits including reinstatement & compensation the above workman is entitled to?”

1. It is averred that the petitioner was engaged as daily waged beldar on 10th October, 1996 in Sub Division Nankhari by the respondent. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). However, the services of the petitioner were dispensed with without complying with the provisions of the Act. It is also alleged that while dispensing with the services of the petitioner, "the principle of last come first go" was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability and limitation. On merits, it is stated that the petitioner was engaged as daily waged beldar in September, 1996 and worked intermittently till June, 2000. The petitioner never worked for 240 days in any calendar year. The petitioner abandoned the job on his own in June, 2000. Prem Chand was engaged as work inspector in the year 1998 against different category.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner have been illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? ..OPP.
3. Whether this petition is barred by limitation? ..OPR.

4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

- | | |
|-------------|---|
| Issue No. 1 | Yes. |
| Issue No. 2 | Entitled for reinstatement with seniority and continuity in service but without back wages. |
| Issue No. 3 | No. |
| Relief. | Reference answered in affirmative per operative part of award. |

Reasons for findings

Issue No.1:

5. It is apparent from the mandays chart Ex.RA that in fact the petitioner was engaged in September, 1996 and not in October, 1996. He was retrenched on 29.06.2000. He had completed only 83 days, 214 days, 67 days, 169 days and 124 days in the years, 1996, 1997, 1998, 1999 and 2000 per mandays chart. The petitioner had not completed 240 days of service in a calendar year to seek the protection of section 25-F of the Act.

6. The respondent has not followed the principle of last come first go. S/Shri Chet Ram, Vijay and Ms. Seema who were junior to the petitioner are still working with the respondent. Shri Dila Ram, Clerk, in the office of XEN, IPH, Rampur Division testified that S/Chet Ram, Vijay and Ms. Seema were engaged in the years 1996, 1997 and 1997 respectively that is, after the engagement of the petitioner., There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana.**

7. The plea of abandonment of job by the petitioner is not established. The testimony of RW-2 Shri Chhangu Ram, Assistant Engineer that the petitioner abandoned the job is not fortified by any notice or letter regarding the abandonment of job by the petitioner. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

8. Thus, it is evident that juniors to petitioner S/Shri Chet Ram Vijay and Ms. Seema are still working with the respondent and as such the termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2:

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3:

10. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th February, 2012 in the presence of parties counsel.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref.122/2010

3.1.2012

Sh Ashok Kumar V/s Resort manager Shilon Resort , Shimla.

3.1.2012

Present:- Shri Niranjana Verma, Advocate for petitioner.

Sh Pankaj Chauhan, Advocate for respondent.

The Parties have entered into a settlement in this case. The respondent pursuant to the settlement has made a payment of sum of Rs.30,000/-(Rs Thirty thousand only) to the petitioner vide demand draft no.590584 payable at Punjab National Bank, Shimla. The petitioner has accepted the amount in full and final satisfaction of his claim. The reference, as such , is answered in terms of the settlement. Let a copy of this order be sent to the appropriate government for publication in the official gazette. The record of this case file be consigned to records.

Announced.

3.1.2012.

Sd/-

Presiding Judge,
Labour Court, Shimla.

Ref.148/2007

28.12.2011

Sh Ram Samujh Yadav V/s M.D.M/s Sidhartha Super Spining , Nalagarh.

28.12.2011:-

Present:- Sh Rupesh Sharma, Advocate for petitioner.

Sh.Rajeev Sharma, Advocate for respondent.

The parties have entered into a settlement in this case. The respondent has made payment of Rs.60,000/-(Sixty thousand only) toward full and final satisfaction of claim of the petitioner. The details of the payment is reflected in Ex.C-1. The statements of counsel for petitioner to this effect has been recorded. The reference is answered in terms of the settlement. Let a copy of this award be sent to the appropriate government for publication in official gazette. File ,after completion, be consigned to records.

Announced

28.12.2011

Sd/-

Presiding Judge,
Labour Court , Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, SHIMLA, (H.P.)

Ref No. 72 of 2007.
Instituted on. 24.8.2007.
Decided on 24.1.2012.

1. Sarvjeet Singh S/o Shri Jasmer Singh, R/o Village Naun, P.O Dharampur, District Solan, H.P.
2. Devinder Chand S/o Shri Gopal Chand, R/o Village Sihardi, P.O Dharampur, District Solan, H.P.
3. Ramesh Kumar S/o Shri Mohan Lal R/o Village Samlach, P.O Bhoahli, Tehsil and District Solan, H.P.
4. Devki Nandan S/o Shri Narain Dass R/o Village Rado Pand, P.O Dhar ki Bher via Dharampur, District Solan, H.P. .. Petitioners.

Vs.

Pradhan/Secretary, Gram Panchyat Dharampur, District Solan, H.P.

..Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Rajeev Sood, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of S/Shri Sarvjeet Singh S/o Shri Jasmer Singh, Devinder Chand S/o Shri Gopal Chand, Ramesh Kumar S/o Shri Mohan Lal Devki Nandan S/o Shri Narain Dass workmen by the Pradhan/Secretary, Gram Panchyat them chargesheet and without holding any domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. It is pleaded that the petitioners were appointed as tax collectors. The petitioners S/Shri Sarvjeet Singh, Ramesh Kumar, Devinder Chand and Devki Nandan were appointed during 1992, 1992, July, 1989 and in the year, 1986 respectively. The petitioners have completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioners were dispensed with on 31.5.2005 without complying with the provisions of Act. It is also alleged that while dispensing with the services of the petitioners “the principle of last come first go” was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability, suppression of facts and jurisdiction. On merits, it is stated that the respondent was a welfare body governed by H.P Panchyati Raj Act and was not an industry. The respondent was not a private or public limited company. The petitioners were appointed as tax collectors on casual basis. The

petitioners illegally retained the money collected and for non performance, were served with notices. The petitioners did not submit any reply to the notice and their services were terminated and work of tax collection was given to the contractor.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition 5. On the pleadings of the parties, following issues were framed:

1. Whether the termination of services of petitioners by the Pradhan/Secretary of respondent Gram Panchyat w.e.f. 31.5.2005 without serving them chargesheet, without holding any domestic enquiry and without complying the provisions of I.D act, 1947 is improper and unjustified as alleged? OPP....
2. If issue no.1 proved, to what relief of service benefits and amount of compensation, the petitioners are entitled to? ..OPP.
3. Whether the claim is neither competent nor maintainable? ..OPR.
4. Whether this Court has no jurisdiction to try and determine this reference as alleged? ..OPR.
5. Whether the respondent is not an industry as alleged? ..OPR.
6. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3.	Yes.
Issue No. 4.	Yes.
Issue No. 5.	No.
Relief.	Reference answered in negative per operative part of award.

Reasons for findings

Issue No.1, 4 and 5:

7. All these issues are being taken up together for the sake of convenience and just decision of the case. The respondent is a body governed under the provisions of Panchyati Raj Act. The respondent is not a private or public limited company and there is no separate department in the office of the respondent. So, tax collection activity whether is a sovereign function or not has to be determined.

8. Section 2(s) of Industrial Disputes Act, defines the Industry as under:-

““industry” means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,--

- (i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes ----

9. The Apex Court in case reported in 1978-1 Lab. LJ IC 349 in case titled as Bangalore Water Supply and Sewerage Board Vs. A. Rajappa has laid down dominal nature test amongst others for determining the nature of activity as Industry as follows:-

“The dominant nature test.

(a) Where a complex of activities some of which qualify for exemption, others not involves employees of the total undertaking some of whom are not “workmen” as in Delhi University case or some departments are not productive of goods and services if isolated, even then., the predominant nature of the services and integrated natures of the departments as explained in the Nagpur Corporation case (AIR 1960 SC 675) will be the true test. The whole undertaking will be “industry” although those who are not “workman” by definition may not benefit by the statute.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are not substantially severable, then they can be considered to come within S. 2(j).

(d) Constitutional and competently enacted legislative provision may well remove from the scope of the Act. “

10. If the ratio laid down by the Apex Court in the laid case is applied to the facts of the present case, it is quite clear that tax collection cannot be regarded as undertaking analogue to trade or business. The tax collection is not organized or arranged in a manner in which trade or business is generally organized or arranged. The success of tax collection does not depend upon co-operation between the employer and employee nor they associate together with a view to render material services to the public. Though, the government or public utility may be an employer yet it is apparent that the nature of function is a function which has force in a manner that for failure to pay, coercive method can be adopted for recovery. The function is a sovereign function entrusted to the Gram Panchyats by the Legislature in exercise of the power vested under the Constitution of India. The tax so collected may be spent on welfare activity would not mean rendering of services to the public by the respondent. So, it cannot be held to be a systematic activity whereby there is co-operation of employee and employer who associate together to render material services to the public. So, it is evident that the function of tax collection is a sovereign function and the activity performed is not industrial action.

11. In case reported in 2003 Lab. I.C 1088 case titled as Navsari District Panchyat and another Vs. Sumanbhai Morarbhai Patel and another, it was held that the health Department of District Panchyat is an industry. The submission as such has been made that the Panchyat by performing activity of tax collection also falls in the definition of an industry. The reference made to the decision (supra) makes it evident that in the said case, the question was whether scavenging and sanitation service was analogous to trade or business. However, in the State of Maharashtra and Gujrat, three tier structure of Panchyati Raj, exists and departments of government are under the control of the District Panchyat at the district level and with the Nagar Panchyat and Gram Panchyat at Block or village level whereas in the State of Himachal Pradesh such departments are not under the control of the Zila Parishad at district level and Nagar Panchyat at Block level,

therefore the ratio of the aforesaid decision as such is distinguishable. On the strength of the decision reported in 1978-1 Lab. LJ IC 349 in case titled as Bangalore Water Supply and Sewerage Board Vs. A. Rajappa, it can safely be held that the respondent is performing sovereign function and the activity of tax collection performed by the respondent is not covered under the definition of industry as provided in the Act. The respondent by authorizing the petitioners to collect tax has discharged a sovereign function. The petitioners as such cannot be termed as workmen.

12. On failure of the petitioners to attend the office and to deposit the amount, notices Ex. RA-2, RA-1, RA-4/10, RA-4/8, RA-4/6 and RA-3 during the period, were issued to them to explain their conduct. The petitioners did not file reply to such notices. The termination of the petitioners, in such a situation, cannot be held to be illegal especially when the petitioners were not workmen.

13. On analyzing the case from the angle of the petitioners that there was no such infringement, the course available with the petitioners was to have approached the competent court and not this Tribunal. Thus, it is clear that the petitioners are not workmen. All These issues are answered against the petitioners.

Issue No. 2:

14. The findings recorded on issue no.1 makes it evident that the petitioners are not workmen. The petitioners are not entitled to any relief. The issue is decided against the petitioners.

Issue No. 3:

15. The petitioners per finding on issue no.1 are not workmen, as such, the claim is not maintainable. This issue is answered in favour of the respondent.

Relief

In the result, the reference is answered in negative and as such the petitioners are not entitled to any relief as claimed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 24th Day of Jan., 2012.

Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.